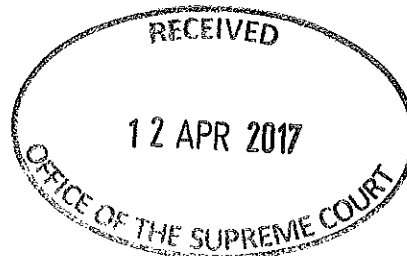


**SUPREME COURT**  
**Respondent's Notice**



<b>Supreme Court record number</b>	<b>2017/000052</b>
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**[Title and record number as per the High Court proceedings]**

<b>An Taisce – The National Trust for Ireland</b>	<b>V</b>	<b>McTigue Quarries Limited and Gary McTigue and Caroline McTigue</b>
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<b>Date of filing</b>	<b>12<sup>th</sup> April 2017</b>
<b>Name of respondent</b>	<b>An Taisce – The National Trust for Ireland</b>
<b>Respondent's solicitors</b>	<b>O'Connell &amp; Clarke Solicitors Suite 142 The Capel Building Mary's Abbey Dublin 7 County Dublin</b>
<b>Name of appellant</b>	<b>McTigue Quarries Limited and Gary McTigue and Caroline McTigue</b>
<b>Appellant's solicitors</b>	<b>O'Dwyer Solicitors Ballyhaunis Co. Mayo DX 94 001</b>

**1. Respondent Details**

**Where there are two or more respondents by or on whose behalf this notice is being filed please also provide relevant details for those respondent(s)**

<b>Respondent's full name</b>	<b>N/A</b>
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<b>The respondent was served with the application for leave to appeal and notice of appeal on date</b>
<b>5<sup>th</sup> April 2017</b>

**The respondent intends :**

<input type="checkbox"/>	<b>to oppose the application for an extension of time to apply for leave to appeal</b>
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<input checked="" type="checkbox"/>	<b>not to oppose the application for an extension of time to apply for leave to appeal</b>
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<input type="checkbox"/>	<b>to oppose the application for leave to appeal</b>
--------------------------	--

<input type="checkbox"/>	<b>not to oppose the application for leave to appeal</b>
--------------------------	--

<input type="checkbox"/>	<b>to ask the Supreme Court to dismiss the appeal</b>
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<input type="checkbox"/>	<b>to ask the Supreme Court to affirm the decision of the Court of Appeal or the High Court on grounds other than those set out in the decision of the Court of Appeal or the High Court</b>
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<input checked="" type="checkbox"/>	<b>Other (please specify)</b>
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<b>An Taisce seeks to appeal from a part of the decision of the High Court, specifically the</b>
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decision, set out at paragraph 24 of the High Court's judgment ([2016] IEHC 620), not to grant the injunctive reliefs sought by An Taisce. Such injunctive reliefs being those set out at paragraphs 1 and 2 of the Notice of Motion dated 12 October 2015.

An Taisce seeks the following Orders from this Honourable Court:

1. An Order requiring the Respondents in the said High Court proceedings, their servants and agents to cease all unauthorised development including all works for the extraction of stone and gravel, the carrying out of rock and gravel processing activities, the loading of materials and the transportation of the said materials from the quarry and all related and ancillary works on lands located at Cartron, Belclare, Tuam, Co. Galway.
2. An Order requiring that the unauthorised development located at lands at Cartron, Belclare, Tuam, Co. Galway, cease.
3. An Order for the Costs of the within Appeal.
4. Such further or other Order as this Honourable Court should deem meet.

If the details of the respondent's representation are correct and complete on the notice of appeal, tick the following box and leave the remainder of this section blank; otherwise complete the remainder of this section if the details are not included in, or are different from those included in, the notice of appeal.

Details of respondent's representation are correct and complete on notice of appeal: ☒ X

#### Respondent's Representation

Solicitor			
Name of firm			
Email			
Address		Telephone no.	
		Document Exchange no.	
Postcode		Ref.	
How would you prefer us to communicate with you?			
<input type="checkbox"/> Document Exchange	<input type="checkbox"/> E-mail		
<input type="checkbox"/> Post	<input type="checkbox"/> Other (please specify)		

Counsel			
Name			
Email			
Address		Telephone no.	
		Document Exchange no.	
Postcode			

Counsel			
Name			
Email			
Address		Telephone no.	
		Document Exchange no.	
Postcode			

If the Respondent is not legally represented please complete the following

Current postal address

Telephone no.
e-mail address

How would you prefer us to communicate with you?			
<input type="checkbox"/>	Document Exchange	<input type="checkbox"/>	E-mail
<input type="checkbox"/>	Post	<input type="checkbox"/>	Other (please specify)

2. Respondent's reasons for opposing extension of time

<p><b>If applicable, set out concisely here the respondent's reasons why an extension of time to the applicant/appellant to apply for leave to appeal to the Supreme Court should be refused</b></p> <p>N/A</p>
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3. Information about the decision that it is sought to appeal

<p><b>Set out concisely whether the respondent disputes anything set out in the information provided by the applicant/appellant about the decision that it is sought to appeal (Section 4 of the notice of appeal) and specify the matters in dispute:</b></p> <p>N/A</p>
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4. Respondent's reasons for opposing leave to appeal

<p><b>If leave to appeal is being contested, set out concisely here the respondent's reasons why:</b></p> <p><i>In the case of an application for leave to appeal to which Article 34.5.4° of the Constitution applies (i.e. where it is sought to appeal to the Supreme Court from the High Court)-</i></p> <ul style="list-style-type: none"> <li>* the decision in respect of which leave to appeal is sought does not involve a matter of general public importance</li> <li>* it is not, in the interests of justice, necessary that there be an appeal to the Supreme Court</li> </ul> <p>there are no exceptional circumstances warranting a direct appeal to the Supreme Court.</p> <p>N/A</p>
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5. Respondent's reasons for opposing appeal if leave to appeal is granted

**Please list (as 1, 2, 3 etc in sequence) concisely the Respondent's grounds of opposition to the ground(s) of appeal set out in the Appellant's notice of appeal (Section 6 of the notice of appeal):**

1. The Learned High Court Judge was correct in law in finding that the Appellants are carrying out unauthorised development and in his interpretation and/or analysis and/or findings in respect of the relevant provisions of Part XA of the Planning and Development Act 2000, as amended and the relevant provisions of the Environmental (Miscellaneous Provisions) Act 2011.

2. With respect to the High Court's finding that the Appellants are carrying out unauthorised development, the Learned High Court Judge was correct in law in his analysis of and/or application of the Environmental Impact Assessment (EIA) Directive and the decision of the Court of Justice in Case C-215/06 *Commission v. Ireland*.

3. As stated above, An Taisce seeks to appeal only *a part* of the decision of the Learned High Court Judge, specifically the decision, set out at paragraph 24 of the High Court's judgment ([2016] IEHC 620), not to grant the injunctive reliefs sought by An Taisce. Such injunctive reliefs being those set out at paragraphs 1 and 2 of the Notice of Motion dated 12th October 2015.

4. The Appellants are carrying out quarrying works and development including, *inter alia*, excavation works comprising blasting of rock and stone crushing at a quarry located at Cartron, Belclare, Tuam in Co. Galway. All of this development constitutes unauthorised development as, *inter alia*, no valid planning permission exists which authorises the carrying out of such development. An application for "substitute consent" under Part XA of the Planning and Development Act 2000, as amended, was lodged with An Bord Pleanála in respect of the aforesaid quarry by the Appellants and on 5th January 2015 that application was determined and a grant of substitute consent issued.

5. With respect to the relevant provisions of Part XA of the Planning and Development Act 2000, as amended ('the 2000 Act'), it is clear that it was only following the commencement of certain amendments in July 2015 that the substitute consent procedure now provides for prospective authorisation for a proposed development arising from a grant of substitute consent. Prior to such amendments in July 2015, substitute consent regularised only what was done previous to the consent and allowed for the undertaking of certain remedial measures after the consent. The substitute consent process (pre and post-July 2015 amendments) makes no provision whatsoever for a grant of substitute consent in respect of development that is being carried out and/or is ongoing. To provide otherwise would be fundamentally and entirely contrary to and inconsistent with European law as identified by the Court of Justice in Case C-215-06 *Commission v. Ireland* (see paragraphs 49 to 58), insofar as it would mean that a substitute consent could authorise works that would require an EIA, without such an EIA being undertaken in advance of the works being carried out. In light of the foregoing the grounds of appeal set out by the Appellants as relate to the statutory scheme under the 2000 Act, the EIA Directive and Case C-215-06 are unsustainable, erroneous and misconceived.

6. Contrary to the erroneous contentions of the Appellants, a substitute consent, such as the one at issue in the within proceedings, cannot be said to authorise works that would require EIA without such assessment being undertaken in advance of the works being carried out. That is precisely what is contended for here by the Appellants. The Environmental Impact Statement (EIS) submitted with the relevant substitute consent application was remedial only. There was no or no proper description of the prospective or future development. There has been no assessment carried out of any future development of the relevant site. No future development is permitted by the relevant substitute consent - such consent, and therefore the assessment carried out in the making of that consent, is retrospective only. The relevant substitute consent does not authorise any future works, and no evaluation or examination or assessment of such future works is undertaken. None of the assessments required under Section 172 or Section 177S or Section 177T of the 2000 Act are recorded as having been undertaken on the works currently being carried out as part of the impugned development.

7. The current or future development of the relevant quarry site is not regulated by any conditions. The conditions in the relevant substitute consent only relate to restorative or remedial works. There is no condition regulating the matters one would normally expect to be governed by a permission for a prospective quarry development. The extent of the permitted development is not specified. The ultimate quarry depth is not set out. There are no conditions regulating opening hours, blasting, emissions limits such as noise, dust, waste water, traffic. There are no limits on extraction rates. In effect, if the Appellants are correct they have obtained, without any public consultation or assessment by the planning authority or An Bord Pleanála, an effectively unlimited, unconditioned and unrestrained development consent. This is contrary to national and European law.

8. With respect to ground No. 5 of the Appellants grounds of appeal, the Learned High Court Judge did not err in fact or in law in awarding costs to An Taisce under Section 3(4) of the Environmental (Miscellaneous Provisions) Act 2011. The Appellants ground of appeal regarding Section 7 of the Environmental (Miscellaneous Provisions) Act 2011 is erroneous and misconceived as evidenced, *inter alia*, by the wording of Section 7(1) of the Environmental (Miscellaneous Provisions) Act 2011, which provides, "*A party to proceedings to which section 3 applies may at any time before, or during the course of, the proceedings apply to the court for a determination that section 3 applies to those proceedings*" and from the wording of Section 7(2) of the Environmental (Miscellaneous Provisions) Act 2011 which provides, "*Where an application is made under subsection (1), the court may make a determination that section 3 applies to those proceedings.*"

An Taisce reserves the right to advance the aforesaid grounds by way of legal submissions in due course, if leave is granted.

**Name of counsel or solicitor who settled the grounds of opposition (if the respondent is legally represented), or name of respondent in person:**

**Aoife O'Connell, Solicitor.**

6. Additional grounds on which decision should be affirmed

Set out here any grounds other than those set out in the decision of the Court of Appeal or the High Court on which the Respondent claims the Supreme Court should affirm the decision of the Court of Appeal or the High Court:

N/A

Are you asking the Supreme Court to:

depart from (or distinguish) one of its own decisions?

☐

Yes

☒

No

If Yes, please give details below:

make a reference to the Court of Justice of the European Union?

☐

Yes

☒

No

If Yes, please give details below:

Will you request a priority hearing?

☒

Yes

☐

No

If Yes, please give reasons below:

Contrary to the statutory scheme and European law, the ongoing quarrying development being carried out on the said lands located at Cartron, Belclare, Tuam, Co. Galway, which the Learned High Court Judge correctly found to be 'unauthorised development' as defined in the Planning and Development Act 2000, as amended, is being carried out without planning permission and/or any development consent and in the absence of a requisite environmental impact assessment (EIA) having been carried out in respect of the development prior to the commencement of same.

Signed: O'Connell & Clarke  
(Solicitor for) the respondent

Please submit your completed form to:

The Office of the Registrar to the Supreme Court  
The Four Courts  
Inns Quay  
Dublin

This notice is to be lodged and served on the appellant and each other respondent within 14 days after service of the notice of appeal.