



An
Bord
Pleanála

Inspector's Report ABP301871-18

Development	Construction of an asphalt plant and restoration of former Quarry.
Location	Tonroe, Ardrahan, County Galway.
Planning Authority	Galway County Council.
Planning Authority Reg. Ref.	17/1438.
Applicant(s)	John Madden and Sons Limited.
Type of Application	Permission.
Planning Authority Decision	Split Decision (i) Grant of Planning Permission for Quarry Restoration. (ii) Refusal of Permission for Asphalt Plant.
Type of Appeal	First Party -v- Refusal of Asphalt Plant. Third Party -v- Grant of Quarry Restoration.
Appellants	(i) John Madden and Sons Limited, (ii) Brendan Dowling.
Observers	None.
Date of Site Inspection	19 th September, 2018.
Inspector	Paul Caprani.

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1.0 Introduction

ABP301871-18 relates to a first party appeal against the split decision issued by Galway County Council in respect of the restoration of a quarry and the development of an asphalt plant in Tonroe, Ardrahan, County Galway. The first party appeal while welcoming Galway County Council's decision to issue notification to grant permission for the restoration of the quarry, is appealing the decision of Galway County Council to refuse planning permission for the asphalt plant. Galway Co Council issued notification to refuse permission for the asphalt plant for two reasons, which related to the requirement to import aggregate materials to serve the proposed asphalt plant and the second reason argued that adverse impacts on Natura 2000 sites. A separate third-party appeal was submitted by Mr. Brendan Dowling which highlights concerns in respect of the planning history associated with the site and matters in relation to EIA.

2.0 Site Location and Description

The appeal site is located in the townland of Tonroe, approximately 1.5 kilometres north of the settlement of Ardrahan, a small village located on the former N18 (R458) Galway-Ennis Road between Oranmore and Gort. The site constitutes a former limestone quarry which ceased production in 2009.

The former N18 has been downgraded from a national primary route to a regional route as a result of the opening of the new M18 Tuam to Gort section of motorway in September 2017. The site is located on lands to the immediate north of the former N18. The site is accessed via the L5664, a c.0.9 km long local access road which ends in a cul-de-sac at the entrance to the former quarry. The road is estimated to be between 4 and 5 metres in width along most of its alignment. Its alignment is relatively straight with the exception of an acute right-hand bend at the top of the road near the entrance of the quarry. The local road widens at the bend to accommodate adequate turning radii for larger vehicles (see photographs attached). With the exception of one dwelling, located approximately 300 m from the junction, the road exclusively serves the former quarry and a breakers yard which is located

to the immediate south of the former quarry. There is also a large vacant commercial shed located along the local access road (L5664). A number of dwelling houses are also clustered around the junction of the access road and the former N18 (R458).

- 2.1. The former quarry occupies an area of approximately 19 hectares. The quarry comprises of a number of worked out benches and a large central lagoonal area which has been excavated below the water table which has been allowed to flood naturally. Former infrastructure associated with the quarry – portacabins, weighbridge, wheel-wash, bunded concrete areas, stockpiles of aggregate etc are located close to the entrance at the north-western corner of the quarry.
- 2.2. There are a number of dwellings facing directly onto the R458 and the lands to the rear of these dwellings are contiguous to the south-western boundary of the site. The edge of the site is demarcated by a mixture of concrete walls and palisade fencing. The lands to the south of the entrance to the quarry are used as a breakers yard. With the exception of the breakers yard, all lands contiguous to the subject site are in agricultural use.

3.0 Proposed Development

- 3.1. There are two aspects to the proposed development on appeal before the Board. Firstly, it is proposed to construct a new asphalt plant at the north-western corner of the former quarry adjacent to the entrance. The asphalt plant is to occupy an area of 2.86 hectares of the 19 hectare site. The development of the asphalt plant will involve the use of the existing weighbridge and wheelwash facility which previously catered for the quarrying activities on site. The asphalt plant appears to be a generic type facility comprising of storage bins, a filler silo, a mixing plant, a burner, dryer and bagging house as well as hoppers to load aggregate into the plant. The plant is centrally located within the 2.86 hectare site. It is proposed to locate fuel tanks and asphalt tanks immediately adjacent to the plant.
- 3.2. It is also proposed to erect a relatively large building to accommodate storage bays for aggregate and materials together with a machinery maintenance/storage area including a bunded vehicle fuel tank to the south of the asphalt plant. This building incorporates a monopitched roof rising to a maximum height of 12 metres. It is to

incorporate a 3 metre high reinforced concrete retaining wall with steel columns and steel roof beams above.

- 3.3. Other ancillary works include the provision of visitor/staff car parking. The renovation of the existing office, the incorporation of an internal delivery and dispatch road with truck parking areas and the decommissioning of the existing septic tank on site.
- 3.4. Information submitted with the application indicates that a maximum of 80,000 tonnes of imported stone will be used to produce a maximum of 100,000 tonnes of asphalt/bituminous macadam annually. The imported stone will be combined with 20,000 tonnes of other imported material including sand, hardchip and bitumen. It is estimated that approximately 400 tonnes of finished product will be produced per day with an average of 800 – 1,000 tonnes being produced at peak times. Portaloos will be provided adjacent to the site office.
- 3.5. The second aspect of the proposed development involves fulfilling the pre-existing and outstanding condition requirements of the grant of planning permission for the continuance and extension of the quarrying activity granted by An Bord Pleanála in 2002 under Reg. Ref. PL07.129246 which expired in 2009. Condition No. 23 of the Board's grant of planning permission required that restoration shall be carried out within 1 year of the completion of the development in accordance with the details submitted. Information on file indicates that due to the liquidation of the previous operator of the quarry, the required restoration was never completed. Under the current application, it is proposed to provide additional planting around the perimeter of the site and to secure and maintain boundary walls and security fencing. The restoration will also include the removal of selected inert stockpiles and the spreading of stockpiles of suitable substrate in select areas to promote recolonization of vegetation. It is stated that no works are proposed within the lower floor area which has been the subject of groundwater intrusion during the autumn and winter months. The existing natural recolonization of vegetation will also be allowed to continue. It is indicated that the proposed works will be undertaken within 12 months of grant of planning permission.

4.0 Planning Authority's Decision

Galway County Council issued a split decision in respect of the proposed development. It issued notification to grant planning permission for the completion of the restoration of the previous quarried area (19.26 hectares) subject to 8 conditions. It also issued notification to refuse planning permission for the development of an asphalt plant and associated works at the north-western corner of the site for two reasons which are set out in full below.

- 1. On the basis of the information included with the planning application, the Planning Authority are not satisfied regarding the justification for the proposal to locate a new asphalt plant and associated development in the former quarry at Tonroe, Ardrahan, County Galway due to the limited aggregate stored as stockpiles on site and the requirement to import a maximum of 80,000/year of imported aggregate materials into the site from other quarries in County Galway. In particular the Planning Authority is not satisfied, having regard to the scale of excavation works required from the two stated quarries to supply aggregates for the proposed asphalt plant, and the lack of environmental appraisal of these works. Accordingly, to grant the proposed development would set an undesirable precedent for other similar types of future development in the area, would adversely affect the integrity and conservation objectives of European sites, and therefore, would be contrary to the proper planning and sustainable development of the area.*
- 2. Having regard to the nature and scale of the asphalt plant and associated development proposed on the application site at Tonroe, Ardrahan, County Galway, supported by the Natura Impact Statement submitted with the planning application, in conjunction with the stated sources of aggregate materials to supply the asphalt plant outside the subject site, not supported by the Natura Impact Statement, it is considered that the potential for significant negative impacts on the integrity and conservation objectives of the European sites cannot be ruled out, as a result of the proposed project. The Natura Impact Statement does not comprehensively identify, assess and contain complete, precise and definitive findings on all aspects of the project, which can, by itself or in combination with other plans or projects, affect the*

conservation objective of European sites, in light of best scientific knowledge in the field. European sites are protected under the EU Habitats Directive (92/43/EEC) and the EU Birds Directive (79/409/EEC), as amended by Directive (2009/147/EC) and the European Communities (Natural Habitats Regulations 1997) as amended by the European Community (Birds and Natural Habitats) Regulations 2011. The protection of these sites is further reinforced in the 2015 - 2021 Galway County Development Plan under Policy NHB1, Objective DS6, Objective NHB1, Objective NHB2, Objective NHB3 and DM Standard 40. Based on the information included with the planning application and the application of the precautionary principle, the development as proposed would result in significant adverse impacts on the integrity and conservation objectives of European sites, would contravene materially a policy, objectives and a development plan standard contained in the current Galway County Development Plan and would therefore be contrary to the proper planning and sustainable development of the area.

The decision of Galway County Council was dated 23rd May, 2018.

4.1. Documentation submitted with the Planning Application

The application was submitted to Galway County Council on 29th September 2017. The application was accompanied by the following documentation.

4.1.1. Environmental Impact Assessment Screening Report

This report (contained in a pouch in the front of the file) concludes that the proposed development does not fall within any of the classes of development listed in Part 1 or Part 2 of Schedule 5 and therefore does not fall within a class of development for which EIA is required.

4.1.2. Road Safety Impact Assessment.

The Board will note that this assessment was carried out prior to the opening of the M18. The road safety impact assessment was submitted as part of the application on the 29th September, 2017 whereas the motorway between Tuam and Gort was opened two days previously. The report nevertheless makes a number of recommendations to ensure that all road safety issues are addressed.

4.1.3. *A Planning and Environmental Report*

This report reached the following conclusions in respect of the proposed development.

- The proposed development is consistent with the aims and objectives of the National Spatial Strategy and the Galway County Development Plan.
- The land use, population, employment and tourism / amenities assessment of the area indicates that there has been, and continues to be, a need for jobs and investment in the local area.
- The impact of the proposed development on key ecological receptors will be insignificant and imperceptible in the long term. Furthermore, the proposed restoration plan will facilitate the recolonization and expansion of ecologically valuable habitats. Furthermore, there is no evidence that any bats use the subject site.
- Based on environmental monitoring within and surrounding the site there has been no significant impact on the local or regional surface water or groundwater environment.
- The proposed development will have no impact on the local climate.
- Subject to the employment of appropriate mitigation measures, the proposal will significantly reduce the potential for dust to such an extent that it will not cause nuisance and will have an imperceptible impact on the local or regional environment.
- The operation of the asphalt plant will not result in noise levels above the recommended noise limit set out in the National Planning Guidance.
- The impact from the asphalt point from a visual and landscape perspective is deemed to be acceptable.
- In terms of traffic impact the report states that the N18 at the time of preparing the report (prior to the opening of the M18) was currently over capacity. However, it is anticipated that the opening of the motorway will significantly reduce traffic management issues. It is also stated that the proposed asphalt

plant and associated traffic generation will be significantly less than previous operations of the quarry on site.

- As there will be no breaking of ground or removal of overburden no direct archaeological impacts are anticipated.

4.1.4. *Flood Risk Assessment*

It is stated that there are no major watercourses in the vicinity of the site and, due to the relatively flat nature of the surrounding land, it is estimated that the primary source of flood risk is from pluvial flooding. Reference is made to the OPW flood maps and the OPW preliminary flood risk assessment maps. It is noted that the proposed asphalt plant is located outside the estimated 1,000-year flood events. It is predicted that the provision of an asphalt plant and associated works will not result in any increased flood risk to the environment.

4.1.5. Proposed Restoration Plan for Previously Quarried Area

This report sets out details of ecological walkover findings making specific reference to:

- Habitats
- Flora
- Mammals
- Bats
- Birds
- Aquatic Flora and Fauna

It also sets out details of the proposed restoration plan and the monitoring to be incorporated into the plan and concludes that the Tonroe former quarry provides a unique opportunity to provide refuge for flora and fauna which is native to the calcareous region.

4.1.6. *Natura Impact Statement*

This report sets out details of the Stage 1 Screening for Appropriate Assessment and the Stage 2 Appropriate Assessment. It identifies the Natura 2000 sites which could receive potential significant adverse effects. These are:

- The Castletaylor Complex SAC.
- Kiltiernan Purlock SAC.
- Lough Fingall Complex SAC.

A number of mitigation measures are set out in relation to water management, air quality management, noise, remediation, replanting and lighting. It concludes that with the incorporation of appropriate mitigation measures effective implementation on site will ensure that there will be no significant effects whether individually or in combination with other plans and projects affecting the conservation objectives associated with the Natura 2000 sites above.

4.1.7. *Civil Works Report*

Finally, a report on the 'Civil Works – Planning Stage' is also submitted. It sets out details of the wastewater drainage design and the stormwater drainage design.

4.2. **Initial Assessment by Planning Authority**

- 4.2.1. A report from Transport Infrastructure Ireland states that TII will rely on the Planning Authority to abide by the official policy in relation to development on/affecting national roads outlined in the Spatial Planning and National Road Guidelines for Planning Authorities (2012). It also requires that the proposed development shall be undertaken in accordance with the recommendations of the Transport Assessment and Road Safety Audit submitted.

4.3. **Observations**

- 4.3.1. A number of letters of objection from third parties have been submitted the contents of which have been read and noted. A letter of objection was also submitted by An Taisce.

4.4. **Additional Information Request**

- 4.4.1. On 23rd November, 2017 the Planning Authority requested additional information in relation to the following issues:

- Concern is expressed that 100,000 tonnes of raw material will be imported into the site to serve the asphalt plant at this rural location in order to be exported off-site again. The applicant is requested to provide a comprehensive justification for the proposed development in this regard.
- Further details in relation to the nature of materials to be imported and the source of these materials.
- The applicant is requested to confirm and demonstrate comprehensively that no waste, as identified under European or Irish legislation, will be used as a raw material for the restoration project.
- Further information is required in respect of the Planning and Environmental Considerations Report in relation to traffic and noise issues.
- Further details in relation to climate change and flood risk.
- Further details in relation to water supply.
- Further details in relation to rights of way along the access road.
- Further details in relation to the on-going activities on the adjoining site and whether or not the adjoining site is under the ownership of the applicant.
- Further details in relation to road safety impact assessment and the traffic management plan.
- Further details in relation to bunded fuel storage tanks and the possibility of installing an on-site wastewater treatment system.
- Further details are required in relation to the protection of bird species during the construction and operational phase of the development.
- The applicant is also advised that an air emissions licence will also be required for the proposed development.

4.5. Additional Information Response

4.5.1. The response submitted on behalf of the applicant is summarised below:

- It itemises the materials that will be used in the asphalt plant and also provides a map indicating where the materials will be sourced. It states that

84% of aggregate will be sourced from a quarry near Gort. The map also indicates that the source materials are in close proximity to the M18. It is also confirmed that no materials to be imported or used on site could be classified as 'waste' under EU or national definitions.

- It is stated that the noise emanating from the asphalt plant will be mitigated by design to ensure that compliance with national guidelines is achieved.
- Further details are provided in relation to flood risk assessment. It is reiterated that the site is not liable to flood. Furthermore, it is stated that the asphalt plant and associated works will not result in an increased flood risk to the environment.
- With regard to water supply it is stated that the site previously had, and still has, a working well on site which has more than adequate capacity for site requirements. Drinking water for the office canteen will be imported.
- It is stated that the local road serving the site is a public road and full land registry details are also submitted. It is noted that the upper portion of the road has not been taken in charge by the Planning Authority.
- It is stated that the adjacent lands are not in the ownership of the applicant but are under the ownership of the previous quarry owner.
- Further details in relation to traffic and trip generation and traffic management plan are also submitted. In terms of trip generation, it is estimated that the total cumulative trip generation (including the breakers yard adjacent amounts to 150 vehicles per day). This is considerably less than the previous quarry operating on site and it is also stated that road infrastructure has improved considerably since then.
- Further details in relation to the bunded fuel tanks are also submitted.
- Two amber listed species were noted near the site during the bird surveys. These are Peregrine Falcons and Sand Martins. The proposed development is not expected to have any adverse impact on the habitats of these species.
- The applicant is aware that air pollution licence is required and will be sought prior to construction.

4.6. Further Assessment by Planning Authority

4.6.1. *A report from the Department of Culture, Heritage and the Gaeltacht* makes the following observations in relation to nature conservation.

- The particular concerns from conservation objectives appear to include the potential adverse impacts on groundwater quality and any possible effects on groundwater flows and levels particularly having regard to the presence of turloughs which are Natura 2000 sites in the vicinity.
- In terms of the lesser horseshoe bats and other bat populations, restoration and regeneration of the quarry have potential to impact positively on this habitat.
- It further notes that the restoration of the quarry should be of benefit for nesting birds and that water bodies or lakes in disused limestone quarries may develop high conservation value owing to the range of species that may colonise them and to the absence of fish. Monitoring of the restoration and recovery of the quarry will be required.

4.6.2. *A further planning report* reviews the further information response and recommends a split decision. It is argued that the asphalt plant should be refused on aggregate supply and ecological grounds. It is stated that the supply of appropriate materials required to support the economic development of County Galway is acknowledged. However, the asphalt plant is proposed to be supplied with rock and sand aggregate from quarries near Gort and Dunmore. It is proposed that the quarry at Ballysheedy Gort will supply 84% of the aggregate and the quarry at Dunmore (outside Tuam) will supply sand. It is stated that the quarry at Ballysheedy was granted in 1994 and a further extension was granted for five years solely for the purpose of providing material towards the construction of the M18. An extension of duration was approved in 2015 on the grounds of the M18 motorway being under construction. The lifetime of the permission was extended until 9th August 2020. It is noted that the motorway was opened in September 2017. The planning officer is not satisfied with the proposed sources of aggregate to supply the asphalt plant in terms of security of supply, authorisation to serve the development and compliance with EU Habitats Directive. It is also noted that no addendum to the Natura Impact Statement has been included with the further information to assess the impacts of the excavation of

these aggregate quarries on European sites within the respective zone of influence. The only other source of materials to supply the asphalt plant are the aggregate stockpiles on the Tonroe site which are not of sufficient quantity to justify the proposed plant.

- 4.6.3. For the above reason it was decided to refuse planning permission for the proposed asphalt plant for the two reasons cited above. The quarry restoration was approved subject to 8 conditions.

5.0 Planning History

One appeal file is attached. Under PL07.129246 An Bord Pleanála upheld the decision of Galway County Council under Reg. Ref. 01/3582 for the continuance and extension of quarrying at the subject site together with ancillary works. The extension of the quarry sought the enlargement of excavation from 7.2 hectares to approximately 19.3 hectares. It was proposed to quarry an estimated 2.5 million tonnes of limestone with a maximum annual output of 750,000 tonnes over a four-year period. Permission was also sought for the retention of the crushing and screening plant located on site together with site offices and portacabin, weighbridge, wash bay and oil tank etc. In granting planning permission, the Board limited the life of the permission to 7 years from the date of the order (Condition No. 2).

Condition No. 23 required that restoration shall be carried out within one year of completion of the development in accordance with the details submitted.

6.0 Grounds of Appeal

6.1. Grounds of First Party Appeal

- 6.1.1. The decision of Galway County Council to issue notification to refuse permission for the proposed asphalt plant was appealed on behalf of the applicant, John Madden and Sons Limited, by Tobin Consulting Engineers.
- 6.1.2. The appeal states that it very much welcomes the decision to grant planning permission for the restoration works which will be a significant gain to the local ecology. The current proposal seeks to resolve the long running issue with regard to

the restoration of the quarry. The NPWS raised no objection to the asphalt plant and no questions are raised about the site's feeder quarries.

- 6.1.3. In relation to appropriate assessment, it is the first party appellant's understanding that from studying the reasons for refusal and the planner's report, that the concerns relate not to the asphalt plant itself, but rather to the two quarry sites at Gort and Dunmore where raw material is to be sourced. The supply of materials to the asphalt plant must be way of competitive process which allows the operator to seek the best possible price.
- 6.1.4. It is contended that the quarries which are to supply the asphalt plant are separate projects in their own right, and have been subject to their own separate consent process with associated appropriate assessments etc. To propose to extend the definition of a project to include the quarries providing the raw materials for the asphalt plant would be opening a 'Pandora's box' of almost infinite extent. The grounds of appeal make reference to an example for a housing development where it is suggested that if the Planning Authority's logic in the case of the current application were to be applied in every instance, appropriate assessments would be required for all aspects of the proposed housing development, for example all supply chains for the housing development would be required to be subject to appropriate assessment ie quarries, window manufacturers, paint factories, glass production etc. This is far beyond anything required under EU directives or case law.
- 6.1.5. The NIS submitted with the planning application includes a detailed assessment for the proposed project. Ecological specialists undertook the surveys, research and analysis from other experts as necessary to prepare an NIS. The NIS was prepared on foot of protracted interaction with the Planning Authority. It is reiterated that the NIS was carried out to the satisfaction of the NPWS and the local authority. To suggest that the proposed asphalt plant could have impacts on Natura 2000 sites at potential site where source aggregates are to be obtained is not appropriate. The quarries where material is to be sourced have obtained recent permissions and consents and have been subject to their own environmental appraisal. It is stated that none of the three sites which have been identified for source material for the asphalt plant are located in Natura sites and do not impact on qualifying interests associated with any Natura 2000 site. It is stated that a grant or a refusal of any

permission for the asphalt plant by the Board would not exempt the relevant quarry operators from obtaining further necessary consents under legislation.

- 6.1.6. It is stated that as the asphalt plant is not operational, the sources of raw material are not yet known. Should permission be forthcoming, the sourcing of materials shall be subject to the normal open market process to ensure competitive procurement. It was never the applicant's intention that the development would be tied exclusively to the two particular quarries mentioned in the response to the Planning Authority's request for additional information. Specifically, in relation to the Gort facility, it is stated that this quarry is under the applicant's ownership and is permitted to operate until August, 2020. It is stated that the Gort facility may be subject to further planning applications in due course. With reference to the Dunmore Quarry, it is stated that the planner's assertion that no subsequent consent for obtaining the continuing quarry at this location was granted is incorrect. A subsequent grant of permission for continuing quarrying was obtained from An Bord Pleanála under QSP87. Any reference to any enforcement proceedings in relation to the subject quarry is also incorrect.
- 6.2. The Planning Authority decision challenges the planning status of the sites as well as their status with regard to appropriate assessment. Neither of these issues were highlighted or requested in the Planning Authority's request for additional information. The applicant is fully committed to sourcing raw materials sites that have obtained planning permission in accordance with the proper planning and sustainable development of the area. In fact, it is stated that this would be an important prerequisite for winning any local authority work. The applicant is happy to accept a condition requiring that any raw materials required for the asphalt plant shall only be sourced from a fully authorised and legally compliant facility.
- 6.2.1. Finally, by way of conclusion it is stated that the subject site is a brownfield site which previously accommodated a quarry which had considerably greater environmental impact than the present proposal. Furthermore the proposed development fully complies with policies in the development plan and the applicant is satisfied that the proposal will not impact on any designated sites in the area.

6.3. Third Party Appeal submitted by Brendan Dowling

- 6.3.1. It is stated that the developer has provided an Environment Impact Assessment Screening Report and it is concluded that an EIAR is not required. It is stated that the screening that has taken place in this instance is flawed as substantial further information was sought by the Planning Authority from the developer.
- 6.3.2. It is further argued that the spirit and application of Directive 2014/52/EU, which has yet to be transposed into Irish domestic law, has not been applied or followed during the application. It is submitted that this invalidates the planning application.
- 6.3.3. It is stated that the original planning application (granted by the Board under PL07.129246) was accompanied by an EIS whereas the subject matter of the current application was not.
- 6.3.4. It is also stated various conditions attached to the grant of permission under PL07.129246 have not been complied with including Condition No. 10 which requires the backfilling of the lagoonal area and Condition No. 24 which related to a financial bond requirement.

7.0 Appeal Responses

7.1. Applicant's Response to Third Party Appeal

- 7.1.1. The response on behalf of the applicant by Tobin Consulting Engineers sets out in detail the site planning history and notes that an enforcement notice exists in relation to non-compliance with Condition No. 23 of the parent permission (PL07.129246) which requires that restoration shall be carried out within 1 year of the completion of the development. It is stated that due to the liquidation of the previous quarry owners, the required restoration was never completed. It also sets out details of the proposed restoration plan which include the following:
 - Remove inert stockpiles for use in the proposed asphalt plant from the middle quarry benches.
 - Spread stockpiles of suitable material thinly in select areas in the middle bench to promote the colonisation of plants.

- Retain and augment existing boundary vegetation and planting.
- Secure and maintain the boundary walls and security fencing.
- Maintain the maintenance access track for maintenance of boundary walls, fences and planting.
- Allow nature to continue to utilise the quarry pit floors and walls.
- Undertake no work in water or in the water table layer to ensure that there would be no hydrological or hydrogeological impacts on the wider area of the designated sites therein.
- Erect fence and gate to close off the former quarry subsite/proposed restoration area from the proposed asphalt plant subsite.
- Ensure minimum interference to areas that have undergone natural recolonization and restoration as possible to include habitation of the site by the Peregrine Falcon a Habitats Directive Annex I species.

7.1.2. It is stated that the proposed restoration plan for the former quarry provides a unique opportunity to provide a refuge for flora and fauna native to this calcareous region. It is also stated that the applicant requires a commercial use on site in order to facilitate this restoration plan.

7.1.3. In relation to the need for EIA it is stated that the further information request issued by the Council did not concern the matter of EIA screening at all. Furthermore, there is nothing in the EIA process that prohibits a request for further information.

7.1.4. Furthermore, as pointed out in the EIA screening process, there is no category of development requiring EIA that covers an asphalt plant. Thus there are no grounds for sustaining the case that EIA is required. Whilst an EIAR was not submitted with the planning application a detailed and extensive Environmental Report was included which assessed the development's potential impacts on the environment together with the proposed mitigation.

7.1.5. Notwithstanding the absence of natural transposition legislation, the provisions of Directive 2014/52/EU are deemed to apply from the 16th May, 2017 under the principle of direct effect. All projects/proposed developments to consent authorities on or after 16th May, 2017 must meet the requirements of the Directive.

- 7.1.6. It is also acknowledged that the original restoration plan involved the backfilling of the lagoonal area as per Condition No. 10 of An Bord Pleanála's grant of permission. However, the present restoration works will be much more beneficial and valuable and will restore and maintain that part of the site as a habitat for flora and fauna without disturbance of the natural recolonization which is in progress. It will also provide full benefit to the hydrology of the area of the quarry void as winter water storage. The final restoration plan proposed under the current application has been informed by an extensive ecological survey. It proposes to work with nature and has been informed by feedback from the NPWS in response to earlier applications (Reg. Ref. 16/1006 and 15/707).
- 7.1.7. Finally, in relation to Condition No. 24 which requires a bond, it is stated that when the restoration is accepted as being complete, the matter of the bond can be further considered and agreed with the Planning Authority.

7.2. Third Party Response to the Grounds of First Party Appeal

- 7.2.1. It is argued that the applicant to the appeal process are attempting to introduce information that was not submitted to Galway County Council during the decision-making process. The grounds of the first party appeal argue that the source of aggregate is not relevant or necessary in the decision-making process. This should have been stated during the additional information response to the Planning Authority and not during the grounds of appeal. This new information and evidence cannot now be introduced during the making of the appeal.
- 7.2.2. The quarry at Gort is unauthorised on the grounds that the quarry at Gort was only to be used for and during the construction phase of the M18 motorway. Thus, should Galway County Council have given planning permission for the proposed asphalt plant their decision would have most likely have been ultra vires.
- 7.2.3. In relation to the previous grant of planning permission, the applicant states that the bond was lodged with the Planning Authority and thus it is disingenuous for the applicant to report blame wholly on the previous owner of the quarry.
- 7.2.4. It is also argued that the applicant is being disingenuous in comparing the construction of an asphalt plant to that of a housing development as the construction of the housing development would be temporary in nature whereas the asphalt plant can continue in perpetuity once planning permission is granted.

- 7.2.5. It is suggested that the asphalt plant, in order to become operational including the heating of aggregate for the production of asphalt, will require the plant to begin operating prior to 7.00 in the morning. This, it is argued, would injure the amenities of property in the vicinity. The earlier start time would imply that the applicant cannot comply with noise limits.
- 7.2.6. With regard to the material storage and maintenance building which is over 1,100 square metres in size, reference is made to PL07.124602 where planning permission was refused for a building of 762 square metres due to the intensification of traffic that would arise. A precedent therefore has been set with regard to the construction of such buildings in this area.
- 7.2.7. It is stated that asphalt and cement batching plants tend to be located within quarries in order to avail of the aggregate on site. It is suggested that the requirement to import aggregate particularly from competitor quarries would significantly impact on the profit margin available to the applicant.
- 7.2.8. In conclusion, reference is made to Article 6.3 of the Habitats Directive and the need to ensure the integrity of a protected habitat. Where it is concluded that there would be an adverse effect on the integrity of the habitat there would be a requirement to avail of the provisions of Article 6.4 of the said Directive (Imperative Reasons of Overriding Public Interest).

7.3. Galway County Council's Response to the Grounds of Appeal

It appears that Galway County Council have not submitted a response to the grounds of appeal.

7.4. Observations

- 7.4.1. One observation was submitted by the Kiltiernan Group Water Scheme Co-Operative Society Limited. It states that the Kiltiernan Group Water Scheme has responsibility of supplying drinking water to a total of 595 connections. It is currently supplied by one borehole which is located to the west of the proposed development and abstracts groundwater that flows through epikarst and the karstified limestone aquifer beneath. Due to increased pressure to meet its demand during dry spells of weather, Kiltiernan Group Water Scheme have advanced plans to utilise an additional borehole to the south-east of the treatment plant but in even closer proximity to the proposed development. A zone of contribution report was prepared

for the scheme and months of hydrogeological effort and national resources were expended to create a plan for the catchment. A copy of this report is appended. The proposed development is identified as being located within the zone of contribution to borehole 1 and borehole 2 where groundwater vulnerability is deemed to be extremely vulnerable. It is stated that the development at Tonroe has the potential to result in the contamination of groundwater contributing to the Kiltiernan turlough. The Kiltiernan turlough is assumed to be a hydraulic connectivity with the supply of the borehole.

- 7.4.2. The cumulative impacts on the proposed asphalt plant on water sources has not been adequately assessed and one would question the logic of siting such a facility in such close proximity to a sizeable group water scheme and a number of SACs.

8.0 Development Plan Provision

- 8.1. The site is governed by the policies and provisions contained in the Galway County Development Plan 2015-2021.

- 8.2. The site is not governed by any landuse zoning objectives. There are no specific policy or statements contained within the plan specifically relating to asphalt plants. Policies and provisions relating to mineral extraction and quarries are set out in Section 6.20 and 6.21 of the development plan. The site is located in an area designated as landscape sensitivity Class 1 (least sensitive).

- 8.3. The following policies are referred to in Galway County Council's second reason for refusal of the asphalt plant.

Policy NHB1 – natural heritage and biodiversity. It is the policy of Galway County Council to support the protection, conservation and enhancement of natural heritage and biodiversity, including the protection of the integrity of European sites that form part of the Natura 2000 network, the protection of natural heritage areas, the proposed natural heritage areas, Ramsar sites, nature reserves, wildfowl sanctuaries and Connemara National Park (and any other designated sites including any future designations) and the promotion of the development of a green/ecological network within the plan area, in order to support the ecological functioning and connectivity, create opportunities at suitable locations for active and passive recreation and to structure and provide visual relief from the built environment.

Policy NBH2 relates to non-designated sites. The plan recognises that nature conservation is not just confined to designated sites and acknowledge the need to protect non-designated habitats and landscapes and to conserve the biological diversity in the county.

Objective NHB1 relates to protected habitats and species. The development plan supports the protection of habitats and species listed in the annexes to and/or covered by the EU Habitats Directive and the Birds Directive and regularly occurring migratory birds and their habitats and species protected under the Wildlife Acts 1976 to 2000 and the Flora Protection Order.

Objective NHB2 – biodiversity and ecological networks. The plan seeks to support the protection and enhancement of biodiversity and ecological connectivity within the plan area, including woodlands, trees, hedgerows, semi-natural grasslands, rivers, streams, natural springs, wetlands, stone walls, geological and geomorphological systems, other landscape features and associated wildlife where these form part of the ecological network and/or may be considered as ecological corridors or stepping stones in the context of Article 10 of the Habitats Directive.

Objective NHB3 – the plan seeks to protect water resources in the plan area, including rivers, streams, lakes, wetlands, springs, turloughs, surface water and groundwater quality as well as surface waters, aquatic and wetland habitats and freshwater and water depending species in accordance with the requirements and guidance in the EU Water Framework Directive, the European Union Water Policy Regulations, the Western River Basin District Management Plan, the Shannon International River Basin Management Plan and other relevant EU Directives, including associated national legislation and policy guidance and also have regard to the freshwater pearl and mussel sub-basin management plans.

Objective DS6 relates to Natura 2000 Network and Habitats Directive Assessment.

Under this objective the plan seeks to protect European sites that form part of the Natura 2000 network. In accordance with the requirements of the EU Habitats Directive and EU Birds Directive as well as the Planning and Development Acts and Regulations and had due regard to the guidance in the appropriate assessment guidelines of 2010 as amended. A plan or project within the plan area will only be authorised after the competent authority has ascertained, based on scientific

evidence, screening for appropriate assessment and/or the Habitats Directive Assessment where necessary that

- (a) the plan or project will not give rise to significant adverse, direct, indirect or secondary effects on the integrity of any European site (either individually or in combination with other plans or projects), or
- (b) the plan or project will have significant adverse effects on the integrity of any European site (that does not host a priority natural habitat type/or priority species) but there are no alternative solutions and the plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature. In this case it will be a requirement to follow procedure set out in the legislation and agree to undertake all compensatory measures necessary to ensure the protection of the overall coherence of Natura 2000 sites, or
- (c) the plan or project will have significant adverse effect on the integrity of any European site (that hosts a natural habitat type or a priority species) but there are no alternative solutions and plans or project must nevertheless be carried out for imperative reasons of overriding public interest, restricted to reasons of human health or public safety, to beneficial consequences of primary importance for the environment or further to an opinion from the commission, to other imperative reasons of overriding public interest. In this case it will be a requirement to follow procedures set out in the legislation and agree to undertake all compensatory measures necessary to ensure the protection of the overall coherence of Natura 2000 sites.

DM Standard 40 relates to environmental assessment.

The following measures shall be applied in respect of designated environmental sites.

- Appropriate Assessment
- Ecological Assessment
- Environmental Impact Statement/Assessment

9.0 Planning Assessment

I have read the entire contents of the file, have regard to the issues raised in both the first and third-party appeal and have also had regard to the issue raised in the observation on file. Furthermore, I have also visited the subject site and its surroundings. I consider the critical issues in determining the current application and appeal before the Board are as follows:

- The Proposed Restoration of the Subject Site
- The Need for EIA
- Appropriate Assessment Issues
- Sources of Aggregate and Transportation Considerations
- Groundwater and Water Supply Issues
- Other Environmental Issues
- Other Issues
- Appropriate Assessment

9.1. The Proposed Restoration of the Subject Site

- 9.1.1. As already mentioned in the development description set out above in this report, there are two aspects to the proposed development. Firstly, it is proposed to restore the former quarry area which constitutes approximately 87% of the subject site. Secondly, it is proposed to construct an asphalt plant. It is clear from the grounds of the first party appeal that the applicant is most satisfied with the Planning Authority's decision to grant planning permission for the quarry restoration aspect of the proposed development. Details of the restoration plan was submitted with the original documentation to the Planning Authority (dated March, 2017). I have consulted the said plan and I am satisfied that the proposal is appropriate from an ecological perspective and is generally in accordance with the proper planning and sustainable development of the area. I therefore consider that the Board can restrict its deliberations to the issue in relation to the asphalt plant.
- 9.1.2. However, before turning to the substantive issues with regard to the asphalt plant, the third party appeal submitted argues that the proposed restoration plan is in

contravention of the parent permission issued by the Board under PL07.129246. Specifically it is argued that Condition No. 10 of this permission requires that the central lagoon area be backfilled with material from the site to a level above the maximum winter water table. The reason for this condition was the prevention of pollution of groundwater. The proposed restoration plan submitted with the current application proposes to retain the lagoonal area as is to enable it to flood during the winter season when the water table is at its highest. This provides a suitable aquatic habitat for flora and fauna and will also provide a valuable void for winter water storage and a refuge for water birds.

- 9.1.3. The applicant is perfectly entitled in this instance to alter the restoration plan provided the said restoration plan receives the benefit of planning permission. The revised restoration plan has been submitted as part of the current planning application and appeal before the Board and can be evaluated on its merits. Just because the proposed restoration plan is not strictly in accordance with a condition associated with a previous permission, it does not prohibit the applicant from proposing alternative works or solutions once such solutions receive the benefit of planning permission. There is no basis in my view to the third party appellant's contention that the applicant is precluded from proffering or considering an alternative restoration plan subject to obtaining the benefit of planning permission, such as that sought under the current application.

9.2. **The Need for EIA**

- 9.2.1. The grounds of the third-party appeal also suggest that the EIAR screening process in the case of the current application was flawed on the grounds that the applicant was required to submit significant additional information by way of a further information request. The third-party appellant in this instance has not indicated to the Board as what class of development the subject proposals falls under for the purposes of EIAR. The appellant seems to suggest that because the parent permission i.e. a quarry development required EIA, that the current proposal should also require EIA. What is proposed in this instance is not a quarry but an asphalt plant and an asphalt plant does not fall under any class of development for which EIAR is required under the provisions of Article 93 and Schedule 5 of the Regulations.

- 9.2.2. The Planning Authority in originally assessing the development queried whether or not the aggregate to be imported onto the site constituted 'waste' and therefore constituted a class of development for which EIAR was required. Waste is defined under the Waste Management Acts 1996 (as amended) being a category of waste specified under the First Schedule of the said Act or which 'the holder discards or intends or requires to discard and anything which is discarded or otherwise dealt with as if it were waste shall be presumed to be waste until the contrary is proved'.
- 9.2.3. The aggregate and sand and other such material being imported onto the subject site constitutes raw material for the purposes of making and manufacturing the asphalt product. This in my view does not fall under the definition of waste. It cannot be reasonably argued therefore that the importation of the raw materials in question constitute waste and therefore fall within a class of development for which EIA is required. It appears that the Planning Authority while refusing planning permission for the asphalt plant, accepted the applicant's contention that the proposal was not a class of development for which EIA was required.

9.3. **Appropriate Assessment Issues**

- 9.3.1. It is not proposed in this section of the assessment to carry out an independent appropriate assessment evaluation of a proposed development. This section of the assessment will merely restrict its deliberations to the reason for refusal issued by the Planning Authority with regard to appropriate assessment.
- 9.3.2. The planner's report is not altogether clear in relation to the rationale that was used to refuse planning permission on the grounds of the impact on Natura 2000 sites. The planner's report notes the information contained in the NIS and notes the fact that there are a number of Natura 2000 sites in the vicinity of the subject site which could potentially be impacted upon as a result of the proposal (the Castletaylor Complex SAC, the Ardrahan Grassland SAC, the Kiltiernan Turlough SAC and the Lough Fingall SAC – see separate section in my assessment below).
- 9.3.3. The planner's report also notes that the NIS submitted states that there are no pathways for potential significant effects from the site to the Ardrahan Grasslands SAC. The report goes on to detail the information contained in the NIS. Notwithstanding the planner's concerns in relation to some of the information contained in the NIS, there is no specific request for further details from the applicant

in relation to the appropriate assessment undertaken, or the NIS submitted, in the Planning Authority's request for further information.

- 9.3.4. Notwithstanding the fact that no further information was requested or submitted specifically in relation to the NIS, the second planner's report specifically states that the asphalt plant should be refused on aggregate supply and ecological grounds. The report goes on to state that the planning officer is not satisfied with the proposed sources of aggregate to supply the asphalt plant in terms of security and supply and authorisation to serve the proposed development and compliance with the EU Habitats Directive. It is stated that no addendum to the Natura Impact Statement has been included in the further information to assess the impacts of the excavation of the aggregates on European sites within their respective zones of influence. The second reason for refusal states that the nature and scale of the asphalt plant and associated development proposed on the application site supported by the Natura Impact Statement submitted with the planning application, in conjunction with the stated sources of aggregate materials to supply the asphalt plant outside the subject site not supported by the Natura Impact Statement, and therefore it is considered that the potential for significant negative effects on the integrity and conservation objectives of the European site cannot be ruled out as a result of the proposed development. It also states that the Natura Impact Statement does not comprehensively identify, assess and contain complete precise and definitive findings on all aspects of the development which can by itself, or in combination with other plans or projects, affect the conservation objectives of European sites.
- 9.3.5. The Board should be aware that notwithstanding the fact that Galway County Council requested additional information under 10 separate headings and no less than 28 separate subheadings; none of the issues raised specifically made reference to the Natura Impact Statement or the need to update the Natura Impact Statement in order to address the Planning Authority's concerns.
- 9.3.6. Perhaps more importantly, I do not consider it appropriate that the applicant would be required to carry out either a Stage 1 or a Stage 2 Appropriate Assessment in relation to developments which are not subject to the planning application before the Board. It is neither logical or indeed practical in my opinion that any application for a development which is reliant on raw material or products for the purposes of industrial processes and manufacture would be required to carry out a separate

Stage 1 or Stage 2 Appropriate Assessment on all perspective commercial enterprises which may or may not service the development which is the subject of the application. The applicant in the grounds of appeal makes an appropriate analogy in the case of a housing development or any such construction activity which requires the input of raw materials. The appeal points out that there is no basis in law, nor would it be practical to require AA screening on all raw material inputs associated with a housing development. Equally it would be inappropriate in my view that any application for a retail activity which is such as a supermarket etc. would be required to carry out a Stage 1 or Stage 2 Appropriate Assessment on all potential suppliers of products (be it agricultural produce or otherwise) which are being supplied for the purposes of retailing.

9.3.7. Furthermore, it is ultra vires for the Planning Authority through condition or otherwise to require the applicant in this instance to source aggregate or other raw materials from one particular supplier or a group of suppliers. It is not the role of planning to intervene or interfere with commercial markets as the applicant points out in the grounds of appeal it is reasonable that if the Board grant planning permission for the proposed asphalt plant that the applicant be permitted to source material in accordance with normal market procedures so as to ensure competitive procurement. It is not legally appropriate that the Planning Authority would restrict or tie the applicant to one specific supply source. The imposition of such a condition in my view would fail the test as constituting a reasonable condition under S7.3.5 of the Development Management Guidelines.

9.3.8. For the above reasons I would recommend that the Board reject the second reason for refusal issued by Galway County Council in its entirety.

9.4. **Sources of Aggregate and Transportation Considerations**

9.4.1. In more general terms however The Planning Authority's concerns with the importation of all material to the subject site for the purposes of production is a reasonable and material concern in my opinion, particularly in relation to traffic generation. However any traffic assessment must examine the appropriateness of the development in holistic terms and cannot confine any deliberations to obtaining source materials from specific sites, for the reasons outlined above. That is to say that, the planning authority or the Board must be satisfied that the road infrastructure

serving the site in question is suitable for the importation of aggregate and raw materials generally, as opposed to being only suitable for trip generation to and from certain sites as sources may change over time due to market conditions.

- 9.4.2. In general, I would agree with the third-party appellant in his response to the grounds of appeal that it is most preferable that asphalt plants would be located within the confines of existing quarries where aggregate as a raw material for the plant is readily available for the construction process. In the event where aggregate can be sourced at the same site, this significantly reduces trip generation to the non-requirement for the importation of aggregate which is most optimal from a sustainable transport perspective.
- 9.4.3. Notwithstanding this point, any proposed asphalt plant should be evaluated on its merits and in accordance with the proper planning and sustainable development of the area. Critical in this regard is the road infrastructure serving the subject site. I would agree with the applicant's contention that the subject site is ideally suited in terms of roadway network serving the subject site. The local access road leading to the subject site is very lightly trafficked and serves only a small number of dwellings along its alignment. All but one is located adjacent to the junction. The local access road incorporates a good quality surface and is straight in its alignment. It links up with the former N18 which has been downgraded to the R458. This former national primary route is a good quality road with generous sightlines in both directions at its junction with the local road serving the site (see photo's attached to this report).
- 9.4.4. Furthermore, since the downgrading of the former N18 for a regional route, traffic volumes along this alignment has significantly reduced resulting in ample capacity on the downgraded former national primary route.
- 9.4.5. In addition, the local access road serving the site (L5664) is located less than 1 kilometre with the newly constructed M18 motorway to the north-west of the site. Thus, the road network serving the site is very good from a road safety and road capacity perspective.
- 9.4.6. Aggregate and raw materials to the site and finished product from the site can be distributed onto the national primary network very efficiently from the subject site.
- 9.4.7. I refer to the inspector's report prepared in respect of PL07.129246 which states (page 10) that where maximum production is reached the quarry may generate c.200

truck movements per day and where truck movements are anticipated to increase from 25 movements to 35 movements during morning and evening peak periods. A survey undertaken as part of the assessment in the previous inspector's reports estimate that over a 10-hour period, HGV trips could amount to 174 trips and car trips could amount to an additional 93 trips (two-way). The inspector's report also suggested that during maximum peak production under a worst case scenario, between 210 and 270 HGV trips per day could be generated. (See Page 38 and 39 of inspectors report).

- 9.4.8. The predicted trip generation arising from the asphalt plant is indicated on Page 125 of the Planning and Environmental Report submitted with the application. It indicates that the average movements in and out of the plant including the importation of all raw material and the exportation of asphalt material would result in an average of approximately 88 HGV movements per day. This would rise to a peak of 120 vehicles in any given day.
- 9.4.9. The HGV movement associated with the asphalt plant therefore will be considerably less than that associated with the quarry operating on site. Furthermore, the Board will have regard to the fact that the capacity of the former N18 has significantly reduced as a result of the recent opening of the M18 motorway thereby increasing the capacity on the road in question to a very significant extent. My assessment therefore would indicate that the road network serving the development is acceptable from a road safety and road capacity perspective, notwithstanding the fact that materials are required to be imported to service the proposed asphalt plant.

9.5. Groundwater and Water Supply Issues

- 9.5.1. The Planning Authority, notwithstanding the fact that it had some concerns in relation to the potential impact on Natura 2000 sites surrounding the subject development, did not specifically refuse planning permission for the asphalt plant on reasons relating to surface water and groundwater pollution.
- 9.5.2. The observation on file from the Kiltiernan Group Water Supply Co-Operative Society expresses concerns that the proposed asphalt plant has the potential to contaminate groundwater supplies for the group water scheme. The observations submitted suggest that the proposed development is identified as being located

within the zone of contribution of two boreholes intended to serve the group water scheme and where vulnerability where the vulnerability of the underlying aquifer is classed as extreme.

- 9.5.3. Quarry areas by their nature provide a significant threat to groundwater resources with the removal of soil and subsoil. Soil and subsoil are an important attenuator of pollution by providing an appropriate buffer zones between the water table and the activities above. The fact that there is a large lagoon area existing within the quarry which periodically floods during winter time, exacerbates the potential for groundwater contamination under a scenario where pollutants would enter the lagoonal area through surface or groundwater pathways. The Kiltiernan Groundwater Scheme is located approximately 1.5 kilometres to the west of the subject site. The applicant in his response to the Planning Authority's request for additional information (see groundwater assessment report in Appendix 10(i)) of the additional information response suggests that the groundwater gradient is consistently towards the south and south-west of the subject site and therefore away from the Kiltiernan Group Water Scheme borehole.
- 9.5.4. A report submitted with the observation entitled "Establishment of Groundwater Zones of Contribution for the Kiltiernan Group Water Scheme" prepared on behalf of the National Federation of Group Water Schemes suggests otherwise. This report contends that the groundwater flow is in a more westerly direction towards the groundwater scheme (see Figure 2 of report entitled 'Topography and Regional Drainage'). The delineation of the zone of contribution which is heavily skewed in a north-easterly direction away from the borehole would also suggest that groundwater flow is predominantly in a south-westerly direction.
- 9.5.5. Notwithstanding this I note that the applicant proposes to incorporate a number of mitigation measures for the protection of groundwater and these include the following:
- Any surface water run-off from the asphalt plant and associated hardstanding area will be directed to an oil interceptor and a settlement lagoon prior to its discharge to an engineered percolation area.

- Strict protocols will also be adhered to in relation to refuelling and maintenance of vehicles at designated locations. Spill kits will be provided to address all spillages and leakages.
- All fuel will be stored in bunded tanks in bunded areas.
- No potentially polluting materials will be stored within the remaining former quarry subsite.
- All HGV vehicles will be required to travel through wheelwash on site.

9.5.6. It will be very important in my view that the above mitigation measures would be strictly adhered to having regard to the vulnerability of the site for groundwater contamination. Nevertheless, with the implementation of the above mitigation measures, the proposed development should not give rise to any groundwater contamination. I am also cognisant to the fact that the subject site is located c.1.5 kilometres from the borehole supply. While it may be in the water supply catchment area, the distance between the asphalt plant and the supply well would be such to allow significant attenuation of any potential contamination travelling through the groundwater body.

9.5.7. The Board should also note that the ground levels of the lands between the proposed asphalt plant and the lagoon are slightly more elevated than the ground levels on which it is proposed to locate the asphalt plant. As such any surface water discharge from the asphalt plant would not naturally flow towards the lagoon area but is more likely to flow towards the small drainage ditch along the north-western boundary of the site.

9.5.8. I am therefore satisfied that with appropriate mitigation measures which can be incorporated by way of condition that the proposed asphalt plant will not represent a significant or real threat to groundwater supplies in the area.

9.6. **Other Environmental Issues**

9.6.1. I have read the planning and environmental considerations report contained on file and I am satisfied that the potential impacts arising from the proposed development can be adequately attenuated and addressed with the proposed mitigation measures. The Board will note that there are few residential receptors in the immediate vicinity of the site and it is not considered that the proposed development

will give rise to any significant impact in terms of noise and odour. The Board will note that the site previously accommodated a large limestone quarry which would have given rise to significant levels of noise and dust generation from both the activities on site and HGV traffic travelling to and from the site. The environmental impact arising from the quarry was deemed to be acceptable in accordance with the proper planning and sustainable development of the area and I consider a similar conclusion could be reached in respect of the proposed asphalt plant on site.

9.6.2. In terms of visual impact, I acknowledge that the asphalt plant may be more visible than the quarry operations on site. However, the plant in question is setback considerably from public vantage points particularly along the former N18 and the site in question constitutes a brownfield site which would tend to be more suitable for the accommodation of an asphalt plant than a greenfield site. The site and its surrounding is also designated as Class 1 in terms of visual sensitivity which is deemed to be the least sensitive landscape. I am satisfied therefore the proposed asphalt plant will be acceptable in terms of its environmental impact. The planning authority had no material concerns in relation to general environmental matters, its concerns were related to potential impacts on Natura 2000 sites in the wider area. The assessment specifically in relation to ecology and appropriate assessment is set out under a separate heading below.

9.7. **Other Issues**

9.7.1. A number of other issues were raised by the third-party appellant particularly in his response to the grounds of the first party appeal. In the submission received by An Bord Pleanála on 24th July, 2018 the third party appellant suggested that the applicant was attempting to introduce new information by way of the first party appeal. I do not accept that proposition. The first party appeal merely sought to provide information in support of the contention that planning permission should have been granted for the asphalt plant and the information contained in the first party appeal can in my view be taken into consideration by An Bord Pleanála in deliberating on the appeal before it.

9.7.2. Any issues in relation to the financial bond agreed between the Planning Authority and the applicant are a matter between the parties concerned. I have already argued in my assessment above that the applicant is entitled by way of a new planning

application to seek alteration in relation to any quarry restoration plan which was previously agreed. Under a new planning application any issues previously agreed can be revisited and can be determined in accordance with the proper planning and sustainable development of the area.

- 9.7.3. Any issues in relation to operating hours can be dealt with by way of condition. However, in relation to this matter I do note that the proposed asphalt plant is not located contiguous to any residential development and for this reason it would be reasonable in my view that the applicant be permitted to commence operations at 7 a.m. in the morning. However, if the Board consider it more appropriate it could incorporate a condition prohibiting the operator from the commencement of any activities on site before 8 a.m.
- 9.7.4. With regard to the materials storage and maintenance building reference is made to a decision by An Bord Pleanála under PL07.124602, this Board decision was made in 2001 and is therefore of limited relevance to the current application before the Board. Furthermore, two of the reasons for refusal related to the proposed traffic generated onto a national primary route. The Board will note that the route in question has been downgraded and no longer constitutes a national route.
- 9.7.5. The response of the first party appeal also suggests that there will be little if any profit margin available as a result of sourcing materials from quarries not owned by the applicant. Any issues in relation to profit and competitiveness is a matter for the applicant and not An Bord Pleanála.
- 9.7.6. Finally, the applicant's response makes reference to Article 6.3 and Article 6.4 of the Habitats Directive and implies that where the Board decides that the proposed development would impact on the integrity of Natura 2000 sites in the vicinity it would be required to invoke the procedures set out under Article 6(4) of the Habitats Directive. An independent and objective evaluation of the NIS submitted is set out below.
- 9.7.7. The Board will note that the second reason for refusal issued by Galway County Council specifically states that the proposed development contravenes materially a policy, objectives and a development management standard contained in the current county development plan.

9.7.8. Having regard to the wording of the second reason for refusal the Board may only grant permission in accordance with the provisions of the Act (Section 37(2)(b)) where it considers that

- (i) the proposed development is of strategic or national importance,
- (ii) there are conflicting objectives in the development plan or the objectives are not clearly stated insofar as the development is concerned,
- (iii) permission for the proposed development should be granted having regard to the Regional Planning Guidelines for the area, Guidelines under Section 28, Policy Directions under Section 29, the statutory obligations of any local authority in the area and any relevant policy of government, the Minister or any Minister of government, or
- (iv) the proposed development should be granted having regard to the pattern of development in the area, permissions granted in the area since the making of the development plan.

9.7.9. In relation to this issue it is clear from the planner's report and the wording of the second reason for refusal that the decision of Galway County Council is predicated on concerns with regard to the "stated sources of aggregate materials to supply the asphalt plant outside the subject site, not supported by the Natura Impact Statement, it is considered that the potential for significant negative effects on the integrity and conservation objectives of European sites cannot be ruled out as a result of the proposed project". It goes on to state that "the Natura Impact Statement does not comprehensively identify, assess and contain complete precise and definitive findings on all aspects of the project, which can by itself or in combination with other plans or projects affect the conservation objectives of European sites in light of the best scientific knowledge in the field".

9.7.10. I have argued above in my assessment that the decision of Galway County Council to refuse planning permission on the basis that, not the subject development would have adverse impacts on Natura 2000 sites, but that other developments in the wider area that supply raw materials to the subject site may have adverse impacts on Natura 2000 sites appears to have no basis in planning legislation or in case law.

9.7.11. Furthermore, it is my firm belief that Galway County Council have no basis on which to conclude that the sites which supply raw materials to the subject site are

adversely affecting the integrity of European sites. I do not consider it appropriate that the applicant would be required to exhaustively carry out an AA screening assessment or NIS in respect of all potential sites which could possibly supply raw materials to the subject site.

- 9.7.12. It is also reasonable to assume in my opinion that any potential site which may supply raw material to the appeal site would have undergone comprehensive evaluation in terms of appropriate assessment or any other adverse impact on the environment during the course of receiving its planning permission.
- 9.7.13. I can find no reference in the development plan which specifically requires an application involving AA screening or the submission of an NIS for the said NIS to undertake an appropriate assessment for all potential suppliers which could transport material to and from the subject site. I can find no such policy statement or policy objective explicitly stated in the current Galway County Council Development Plan and as such I would argue that the provisions of Section 37(2)(b)(ii) apply in that the second part of the provision makes reference to “the objectives are not clearly stated insofar as the proposed development is concerned”. If the Board agree with my assessment above and agree that Galway County Council have inappropriately applied tests with regard to appropriate assessment, I consider that there are grounds for the Board to overturn the decision of the planning authority on the basis of the criteria set out under Section 37(2)(b)

10.0 Appropriate Assessment

- 10.1.1. An NIS was submitted with the application on foot of a Stage 1 screening for appropriate assessment. The NIS describes the receiving environment making reference to the habitats on site, the fauna on site, the hydrology, hydrogeology and water quality associated with the site. The NIS goes on to identify European sites which may be affected and further identifies the sites which could potentially suffer significant adverse effects as a result of the proposed development. These are identified as:

- The Castletaylor Complex SAC. The qualifying interests associated with these sites are:
 - Turloughs.

- Alpine and Boreal Heaths.
 - Juniperus Communis formations on heaths or calcareous grasslands.
 - Semi-natural dry grasslands and scrubland faeces on calcareous substrates.
 - Limestone pavements.
- Kiltiernan Turlough SAC.
 - The sole qualifying interest with this SAC is the turlough.
- Lough Fingall Complex SAC. The qualifying interest associated with this SAC are as follows:
 - The lesser horseshoe bat.
 - Turloughs.
 - Alpine and boreal heaths.
 - Juniperus Communis.
 - Semi-natural dry grassland and scrubland faeces on calcareous substrates.
 - Calcareous fens with cladium mariscus and species of caricion davallianae.
 - Limestone pavements.

10.1.2. The NIS goes on to outline the potential adverse effects which could occur on these European sites. The potential adverse impacts are identified as:

- Dust and other emissions from vehicles and machinery arising from the proposed asphalt plant.
- Noise from vehicles and machinery from the asphalt plant.
- Inappropriate lighting from the asphalt plant.
- Uncontrolled emissions to surface water and groundwater resulting from spillages from the asphalt plant.

- The introduction and spread of non-native invasive species.
- No potential in combination effects were identified.

10.1.3. The NIS goes on to set out a series of mitigation measures and concludes that with the incorporation of such mitigation measures, there will be no significant effects either individually or on combination with other plans or projects on the Natura 2000 sites identified as being potentially affected.

10.1.4. For the purpose of completeness, is it proposed to carry out an independent assessment on the likelihood of the proposed development to adversely affect the integrity of Natura 2000 sites in the vicinity. I would agree with the conclusions set out in the Stage 1 screening assessment that the proposed development individually or in combination with other plans or projects has the potential to have a significant effect on European sites. I would also agree that the NIS submitted correctly identified the three Natura 2000 sites which are most likely to be potentially affected by the proposed development.

10.1.5. The Castletaylor Complex SAC is located at its closest point approximately 140 metres from the northern boundary of the subject site. The Castletaylor Complex SAC comprises of qualifying interests that are habitats as opposed to species. The proposed development will not physically encroach within the boundaries of the SAC and therefore will not physically impinge on the habitats referred to. One of the qualifying interests associated with the Castletaylor Complex SAC is the presence of a number of turloughs in the northern part of the SAC. The turloughs in question are located over a kilometre to the north of the SAC. Furthermore, and perhaps more importantly, the direction of groundwater flow in the area, as referred to previously in my report is in a south/south-westerly direction and therefore any potential contamination of groundwater would flow away from the said turlough. Therefore, any pollutants entering groundwater would not have the potential to affect the qualifying turlough habitat. The applicant also proposes a series of mitigation measures in relation to surface water and groundwater which are referred to in my assessment above which will ensure that no adverse effects on the qualifying interests associated with the Castletaylor Complex SAC will occur.

10.1.6. There is also potential that fugitive dust arising from the asphalt plant could potentially impact on the semi-natural dry grasslands and calcareous grasslands as

well as the alpine and boreal heaths associated with the SAC complex. However, again the separation distances involved between the asphalt plant and the SAC together with the incorporation of mitigation measures such as ensuring that all material stored on site is within covered sheds together with the use of wheelwash facilities and other fugitive dust mitigation measures which are set out in Section 5.2 of the EIS will in my opinion ensure that any potential dust arising from the proposed development will not impact on the SAC in question.

10.1.7. The Kiltiernan Turlough SAC is located approximately 1.5 kilometres to the west of the subject site on the western side of the M18 motorway. This turlough is in close proximity to the Kiltiernan Group Water Supply Scheme. I have already argued in my assessment above that the proposed development poses no material threat to groundwater quality associated with the group water supply scheme on the grounds that appropriate mitigation measures will be employed to ensure that no surface water or ground water contamination occurs within the site and that the site is located a significant distance from the group water supply scheme. I consider that the same conclusions can be reached in respect of the potential for the proposal to impact on the integrity of the Kiltiernan Turlough SAC.

10.1.8. Lough Fingall Complex SAC is a larger special area of conservation located between 1.5 and 6.5 kilometres to the west of the subject site. It accommodates very similar habitats which form qualifying interests as that associated with the Castletaylor Complex SAC. It also accommodates one qualifying species, the lesser horseshoe bat. The nearest turloughs associated with the Lough Fingall Complex SAC are located over 3 kilometres to the west of the subject site. Again having regard to the mitigation measures to be incorporated as part of the proposed development in order to address potential problems in relation to groundwater and surface water contamination, together with the separation distance between the potential source and target area, I do not consider that the proposed asphalt plant is likely in any way to have an adverse impact on the turlough in question. There is in my opinion significant separation distances between the subject site and the Natura 2000 site in question to ensure that the lesser horseshoe bat is not in any way affected by the proposed development as a result of noise or light pollution. Particularly having regard to the fact that there is a large motorway interchange located between the subject site and the Natura 2000 site in question.

- 10.1.9. The Ardrahan Grassland SAC is located to the south of the subject site and to the south of the former N18 National Primary Route. This SAC at its closest point is approximately 600 metres from the subject site. Again the qualifying interests associated with this SAC exclusively relate to habitats namely alpine and boreal heaths and juniperus communis formation on heaths and calcareous grasslands and limestone pavements. The proposed asphalt plant will in no way physically impinge on or impact in any way on the habitats which form the qualifying interest of the SAC in question.
- 10.1.10. Notwithstanding the fact that the Planning Authority had some reservations in relation to the conclusions reached in the NIS submitted with the application, having carried out an independent appropriate assessment for the purposes of the current application and appeal I am satisfied that the proposed asphalt development will not adversely impact on any Natura 2000 sites in the wider area surrounding the site.
- 10.1.11. The report from the NPWS in relation to the proposed development notes that “the particular concerns for the conservation objectives of the above sites appear to include potential adverse effects on groundwater quality and any possible effects on groundwater quality flows at levels”. It also suggests that any assessment should include consideration of the in-combination effects of the overall quarrying application as well as the information on groundwater quality and trends. I am satisfied for the reasons set out in my assessment above that the proposed development does not pose a potential threat on groundwater quality arising from the proposed development.
- 10.1.12. With regard to the quarry restoration, I note that the NPWS letter suggests that such a restoration should be primarily for the benefit of biodiversity and that monitoring and restoration of the quarry will be required including monitoring of the presence or spread of invasive species. It is also noted that the restoration and regeneration of the quarry has the potential to have positive effects on bat populations and in particular the lesser horseshoe bat. I am satisfied therefore that the NPWS’s concerns in relation to potential groundwater contamination have been allayed by the mitigation measures proposed and I am also satisfied that the quarry restoration will on the whole have a positive impact on the local environment and is likely to have a positive impact on surrounding Natura 2000 sites in terms of providing additional habitat availability over time.

- 10.1.13. I am also satisfied that the proposed development will not give rise to any indirect effects on the Natura 2000 sites in question. With regard to the issue of in-combination effects there appears to be no other developments in the vicinity of the subject site or in the wider area which could contribute to adverse cumulative or in combination effects on the Natura 2000 sites in question.
- 10.1.14. I therefore consider it reasonable to conclude on the basis of the information on the file, which I consider adequate in order to carry out a Stage 2 Appropriate Assessment, that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of European sites in the vicinity in view of the site's conservation objectives.

11.0 Conclusions and Recommendation

Arising from my assessment above I consider that An Bord Pleanála should grant planning permission for the entirety of the proposed development i.e. the quarry restoration and the proposed asphalt plant on the grounds that the proposed development due to its rural location on a brownfield site would not give rise to any significant or material adverse environmental impacts and as such the proposed development would be in accordance with the proper planning and sustainable development of the area.

12.0 Decision

Grant planning permission in accordance with the plans and particulars lodged based on the reasons and considerations set out below.

13.0 Reasons and Considerations

It is considered that the proposed quarry restoration and proposed asphalt plant subject to the conditions set out below, would not seriously injure the amenities of the area or property in the vicinity, would not adversely impact on the integrity of Natura 2000 sites in the vicinity, would not be prejudicial to public health and would generally be acceptable in terms of traffic safety and convenience. The proposed

development would, therefore, be in accordance with the proper planning and sustainable development of the area.

14.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the plans and particulars received by the planning authority on the 26th day of April, 2018, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The development shall operate only between 0700 hours and 1900 hours Monday to Friday and 0800 to 1400 hours on Saturday. No work shall take place on Sundays or public holidays.

Reason: To protect the amenity of property in the vicinity.

3. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services. In this regard detailed proposals for the protection of ground and surface water from contamination by run-off from the site shall be submitted to the planning authority for written agreement and the agreed measures shall be implemented by the developer.

Reason: In the interest of public health and to ensure a proper standard of development.

4. All vehicles other than private cars and vans leaving the site shall pass through the wheelwash facility.

Reason: In the interest of orderly development.

5. Prior to the commencement of development, details of any proposed effluent treatment system shall be submitted to the planning authority for written agreement. The system shall be designed, installed, commissioned and operated in accordance with the requirements of the planning authority. Evidence of the necessary maintenance contract shall be submitted to the planning authority.

Reason: In the interest of public health and to ensure a proper standard of development.

6. During the operational phase of the proposed development, the noise level from within the site, measured at noise sensitive locations in the vicinity, shall not exceed-

(a) an L_{ArT} value of 55 dB(A) during the period 0630 to 1900 hours from Monday to Friday (inclusive), and 0630 to 1400 hours on Saturdays.

(b) an L_{AeqT} value of 45 dB(A) at any other time.

All sound measurements shall be carried out in accordance with ISO Recommendations R 1996, "Assessment of Noise with Respect to Community Response" as amended by ISO Recommendations R 1996/1, 2 and 3, "Description and Measurement of Environmental Noise", as appropriate. The measurement time intervals to be used are one hour by day and 15 minutes by night.

Reason: To protect the amenities of properties in the vicinity of the site.

7. Within two months of the date of this order, the developer shall submit to the planning authority for written agreement, proposals for the quarterly monitoring of noise levels at nearby sensitive receptors. The results shall be submitted to the planning authority on a quarterly basis within one month of the end of the quarter being reported on. On the basis of results submitted over time, the planning authority may review the frequency of monitoring.

Reason: In the interest of public health.

8. When measured at the site boundaries, dust levels shall not exceed 350 milligrammes per square metre per day (30-day composite sample) as measured using the Bergerhoff Method, or 130 milligrammes per square metre per day as measured on a "Frisbee" type dust gauge. Prior to commencement of development, the developer shall submit to the planning authority proposals for written agreement in relation to the location of dust gauges and indicating which method of monitoring is to be used – Bergerhoff or Frisbee. Dust monitoring shall be carried out three times per year (twice during the period May to September), or as otherwise agreed in writing with the planning authority. The results shall be submitted to the planning authority within one month of the end of the period being reported on. On the basis of results submitted over time, the planning authority may review the frequency of monitoring.

Reason: In the interest of public health.

9. All oil and fuel storage tanks shall be stored in designated storage areas, which shall be bunded to a volume of 110 per cent of the capacity of the largest tank/container within the bunded areas. Filling and draw-off points shall be located entirely within the bunded areas. Drainage from the bunded areas shall be diverted for collection and safe disposal.

Reason: In the interest of public health.

10. Prior to commencement of development, a landscaping scheme shall be submitted to the planning authority for agreement. This scheme shall include proposals for dense planting of trees along the site perimeter, as well as details of all existing trees and hedgerows on the site, specifying those proposed for retention, together with measures for their protection during the period in which the development is carried out. The site shall be landscaped in accordance with the agreed scheme, which shall also include a timescale for implementation.

Reason: In the interest of visual amenity.

11. The proposed completion and restoration of the quarried area shall be undertaken and completed (save for any ongoing maintenance requirements) within two years of the final grant of planning permission unless a further grant of planning permission is obtained by the planning authority or An Bord Pleanála.

Reason: In the interest of clarity and orderly development.

12. (a) All restoration works and proposed removal of stockpiles of stone on site shall take place outside the bird breeding season (1st March to 31st August) and precautionary monitoring for breeding birds shall be carried out prior to the commencement of the restoration works, as set out in the document entitled 'Proposed Restoration Plan for Previous Quarried Area' received by the planning authority on 29th day of September, 2017.

- (b) Bat boxes shall be placed on site as per the details set out in the document entitled 'Proposed Restoration Plan for Previously Approved Quarry Area' received by the planning authority on the 29th day of September, 2017.
- (c) All monitoring proposals set out in Section 6 of the documented entitled 'Proposed Restoration Plan for Previously Approved Quarry Area' received by the planning authority on 29th day of September, 2017 shall be carried out as set out in the plan and details and results shall be made available to the planning authority upon request.
- (d) No development works shall take place below the water table without prior written agreement from the planning authority.

Reason: In the interest of ecology.

- 13. A schedule of works for the removal/reuse of stockpiles of aggregate on site shall be submitted and agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interest of proper planning and sustainable development of the area.

- 14. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the "Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects", published by the Department of the Environment, Heritage and Local Government in July 2006. [The plan shall include details of waste to be generated during site clearance and

construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.].

Reason: In the interest of sustainable waste management.

15. Prior to the commencement of development, details of all improvement works to the adjoining local road including any alterations to the pavement, drainage, signage or road markings shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interest of traffic safety.

16. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

22. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge.

Paul Caprani,
Senior Planning Inspector.

5th November, 2018.