



An
Bord
Pleanála

Inspector's Report ABP 305546-19

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| Development | Asphalt Plant to include a recycled asphalt products (RAP) plant, associated aggregate storage bays and storage area of c.1.7 hectares. |
| Location | Ballyegan Quarry, Ballyegan, Castleisland, Co.Kerry. |
| Planning Authority | Kerry County Council |
| Planning Authority Reg. Ref. | 18/1289 |
| Applicant | Roadstone Ltd. |
| Type of Application | Permission |
| Planning Authority Decision | Grant subject to conditions |
| Type of Appeal | 3 rd Party v. Grant |
| Appellants | <ol style="list-style-type: none">1. Patrick Foran2. Karina O'Mahony3. Desmond Mangan4. Lee and Karina Mangan |
| Observer(s) | <ol style="list-style-type: none">1. Patrick Gerard Dowling2. Paula & Oswald Luck |

3. Mary O'Connor
4. John A. O'Connor
5. John & Helen Divane
6. Sandra Burke
7. Chris Power
8. Tracey & Pdraig O'Mahony
9. Karen Cremins
10. Laura O'Brien
11. Catherine O'Brien
12. Niamh Ni Dhuill
13. Denis Reidy
14. P.J. Dollery
15. Ellen Higginson

Date of Site Inspection

06/02/20

Inspector

Pauline Fitzpatrick

1.0 Site Location and Description

The site, which has a stated area of 1.7 hectares, is within an existing limestone quarry accessed from the N21 National Primary Road c. 4km to the west of Castleisland town. The overall quarry has an approx. area of 34 hectares and is not in operation. The main quarried area is in the centre with the void now flooded due to the return to natural water levels. The areas surrounding the void were previously used for open storage of materials with a concrete batching plant, office building, weighbridge and ancillary storage buildings still on site. The location of the asphalt plant is proposed in the northern section of the site in proximity to the site entrance and existing buildings on the site.

The overall site boundaries are delineated by berms and landscaping which largely preclude open views into the site. It is bounded by the N21 to the north from which it is accessed via a double gated access between splayed walls. There is a right turning lane for vehicles from the national primary road. The roadside boundary is delineated by mature planting. A local road bounds the site to the south. Adjoining lands are in agricultural use. The vicinity of the site is traversed by a network of local roads along which one off housing is prevalent.

2.0 Proposed Development

The application was lodged with the planning authority on the 21/12/18 with further plans and details submitted 07/06/19 and 14/08/19 following requests for further information and clarification of further information dated 21/02/19 and 03/07/19 respectively.

The proposal entails:

Erection and operation of an asphalt/macadam mixing plant with a stack height of 20 metres and includes provision for a recycled asphalt products (RAP) plant and associated aggregate storage bays and storage area. The materials to be used include aggregates, sand, high PSV stone and bitumen. They will be imported to the site if they can't be won from the permitted quarry extraction area.

The RAP plant comprises one additional hopper, a bottom-fed conveyor system and a rising elevator. An existing shed is to be used to keep recycled bituminous material dry.

Operating hours would be between 0600 and 1900 Monday to Saturday. The proposal also seeks to provide for occasional operation of the asphalt plant outside normal working hours up to a maximum of 40 no. days per annum.

Existing site infrastructure including the weighbridge/site office and wheelwash will be used to service the plant. The existing wastewater treatment system is to be replaced.

The proposal will not result in an increase in traffic movements above the peak traffic levels permitted at the quarry (100,000 truck movements per annum).

The proposed development is required to service road infrastructure schemes in the region.

The application is accompanied by:

- Planning and Environmental Report
- Noise Impact Assessment (amended by way of further information)
- Odour Assessment
- Visual Appraisal
- Assessment of Existing On-Site Wastewater Treatment System
- Appropriate Assessment Screening Report (amended by way of clarification of further information)

3.0 Planning Authority Decision

3.1. Decision

Grant permission for the above described development subject to 13 conditions. Of note:

Condition 2: Permission not to be construed as any form of consent or agreement for the extraction of material for use in the proposed asphalt plant from the applicant's landholding as shown outlined in blue on the site location map received 21/12/18.

Condition 3: All environmental mitigation measures as set out in documentation to be fully implemented except as may be otherwise required or specified by way of condition.

Condition 4: Operating hours to be between 0600 and 1900 Monday to Saturday excluding public holidays. No activities or operations at the site and the surrounding quarry site shall be undertaken outside of these times.

Condition 5: No direct discharge of water from the site and surrounding quarry to any surface waters.

Condition 6: Containment requirements of liquids.

Condition 7: Supply of absorbent material in event of spill

Condition 8: Storage requirements of hazardous water if generated on site.

Condition 9: Noise parameters not to be exceeded at nearest noise sensitive receptors.

Condition 10: Dust deposition levels not to be exceeded at site boundaries. Monitoring programme for noise and dust to be agreed.

Condition 11: If required by planning authority engagement of 3rd party to carry out environmental monitoring (noise, vibration, dust). All findings/recommendations to be implemented by applicant. Applicant to contribute to costs of such monitoring.

Condition 12: Any external lighting on site and surrounding quarry to be cowled and directed away from all public roads and shall not be visible from 100 metres distant.

Condition 13: Site and surrounding quarry to be landscaped in accordance with details submitted in 1st growing season following completion of the plant.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The **1st Planner's report** dated **21/02/19** includes AA and EIA Screening. In terms of the AA-Screening it is concluded on the basis of objective scientific information

that the proposal individually or in combination with other plans or projects is not likely to have a significant effect on a European Site and accordingly it is considered that a NIS/Stage 2 AA is not required. In the EIA Screening conclusion it is considered, having regard to the nature, scale and location of the project, by itself and in combination with other plans and projects, that an EIA is not required. The reason for this conclusion is the small scale of the project which is substantially below the (mandatory) thresholds for EIA with no real likelihood of significant effects on the environment arising from the development. A request for further information recommended seeking details on landscaping, visual impact, compliance with conditions imposed under Section 260 of the Planning and Development Act, 2000, as amended, full details on after hours operations, basis for historical quarry traffic volumes, odour assessment, additional noise assessment, source of aggregate, recovery activities and waste quantities involved, lighting plan and details of existing wastewater treatment system on site. The **report** dated **09/09/19** following clarification of further information states that asphalt plants are generally developed on quarry sites where suitable aggregates are sourced. This application does not include for permission to extract any aggregates as the applicant is relying on previous grants of planning permission and quarry registration under Sections 261 and 261A. This stance is open to debate as the issue of abandonment of use would need to be considered. The assessment of this planning application is therefore confined to the proposed asphalt plant. The use of Recycled Asphalt Products (RAP) as a raw material is welcomed. Grant of permission subject to conditions recommended.

Executive Planner and Ecologist, Environmental Assessment Unit in reports dated **19/08/19** and **29/08/19** refer. The 1st report would appear to refer to a different site and development. The 2nd report concludes that the proposal is located within an existing and established quarry removed from Natura 2000 sites, all run off from the site will be naturally directed to a substantial water body located within the existing quarry void which is buffered from the nearest hydrologically connected Natura 2000 site by the quarry lake and approx. 16.5km of connecting waterways and the proposal has no potential for significant or appreciable effects on Natura 2000 sites or on their qualifying interests. Potential for significant effect on habitats

associated with Natura 2000 sites can be ruled out beyond reasonable scientific doubt. It is considered that a NIS/Stage 2 AA is not required.

3.2.2. Other Technical Reports

Environment Section in a memo dated **19/02/19** recommends further information including an odour assessment, additional baseline noise monitoring with particular emphasis on night-time and evening periods and subsequent review of the noise assessment which should take specific account of EPA Guidance Document NG4. Source of aggregate to be clarified. Specific information is required on the recovery activities proposed along with details of the waste quantities involved. Details on the existing wastewater treatment system also required. The **2nd memo** dated **28/06/19** following further information recommends clarification on the new wastewater treatment system. The **3rd memo** dated **06/09/19** following clarification of further information considers that on the basis of noise nuisance it is recommended that site operations should not be allowed outside of the core hours 0600 to 1900. Conditions to be attached to a permission detailed.

County Archaeologist in a report dated **21/01/19** notes no recorded monuments within or in proximity to the site. No mitigation necessary.

3.3. Prescribed Bodies

Transport Infrastructure Ireland in correspondence dated **24/01/19** has no observations.

Inland Fisheries Ireland in correspondence dated **14/02/19** notes that the site has an area of standing water which has historically been subject to ground water fluctuations and stream water inflow via rock fissures. The standing water requires protection from contaminated surface runoff and measures to control such run off should be detailed. Specific control measures are needed where hydrocarbon type materials are to be used with bunded containment areas, details of which should be provided.

3.4. **Third Party Observations**

Objections to the proposal received by the planning authority are on file for the Board's information. The issues raised are comparable to those set out in the 3rd party appeals and observations which are summarised in sections 6.1 and 6.4 below.

4.0 **Planning History**

The Planning and Environmental Report accompanying the application details the planning history on the site dating back to 1977.

1977 - 86077 – permission granted for a tarmac and asphalt plant.

1999 - 127699 – permission granted for mobile tarmac and asphalt plant

1991 – 1950/90 permission granted for extension to existing quarry and diversion of adjacent local road.

PL08.110118 – permission granted for concrete plant and associated activities.

2008 - PL08.QC2008 (QY009) – registration of quarry under section 261.

EUQY009 – planning authority determined no further action required under Section 261A.

5.0 **Policy Context**

5.1. **Local Policy**

Kerry County Development Plan, 2015

The site is within an area zoned Rural General. Section 3.3.2.1 states that these areas constitute the least sensitive landscapes throughout the County and from a visual impact point of view have the ability to absorb a moderate amount of development without significantly altering their character.

Section 12.2.1 – it is important that development in these areas be integrated into their surroundings in order to minimise the effect on the landscape and to maximise the potential for development.

Objective NR-1 – maximise the economic potential and development of natural resources in a sustainable manner while ensuring no significant adverse effect on the environment including the integrity of the Natura 2000 Network through the implementation of the objectives and the Development Management Guidelines and Standards of this Plan.

Objective NR-2 – maximise the employment potential of the natural resources within the County in a sustainable way through the promotion of associated industries at appropriate locations.

Objective NR-3 – ensure that the development and exploitation of natural resources does not result in any significant adverse effects on the local community.

Objective NR-6 – ensure that quarrying and mining proposals are not permitted in areas where the visual or other impacts of such works would significantly adversely injure the amenities of the area or create significant adverse effects on the road network in the area.

Objective NR-7 – ensure that development for aggregates/mineral extraction, processing and associated concrete production will be prohibited in Prime Special Amenity Areas and will not generally be permitted in other open or sensitive landscapes.

5.2. **Natural Heritage Designations**

The nearest European Site is the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (site code 004161) approx. 2 km to the north.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

4 no. 3rd party appeals have been received from:

1. Patrick Foran (accompanied by supporting information, memory stick and DVDs. *Note: one of the disks is cracked and the files on same could not be accessed*).

2. Karina O'Mahony
3. Bernard Mangan (Owner of House No.8, 248 metres from the proposed plant).
4. Lee and Karina Mangan (Owner of house 289 metres from the proposed plant).

The appeals can be summarised as follows:

- The site is in a rural residential area with a childcare facility within 650 metres and schools within 5km. It is not suitable for such industrial plant. The proposal will have a major impact on the quality of life in the vicinity.
- There are more houses in close proximity to the proposal than shown on some of the reports accompanying the application.
- The plant is visible from properties in the vicinity.
- The quarry has been abandoned and has not been used since 2011-2012. It appears following a further information request, that it is proposed to source some limestone from the quarry which it is stated is possible under Section 261 of the Planning and Development Act. This is not included in the application. This is relevant as the area marked for excavation/blasting is on the opposite side of the site which would cause dust/noise/vibration nuisance to nearby residents.
- Kerry County Council and the EPA are aware of the ongoing problems with the operation of the quarry.
- The noise and dust modelling do not represent the reality of living near asphalt/tarmac plants on the site in the past. Permission would result in comparable conditions again.
- It is queried how the noise limits can be met in the period between 0600 and 0800 when the plant will be starting to operate.
- The 2010 and 2011 noise and dust levels submitted with the application are from when the quarry was winding down so are not relevant. The background noise levels of 10/12/18 and 29/03/19 are not representative of prevailing

conditions. The noise and dust modelling and calculations require clarification.

- There are health concerns arising from dust deposition and air quality.
- The asphalt plant should be assessed for Major Hazards involving Dangerous Substances. Health and safety concerns arise. The application does not identify what procedures would be put in place should something happen. Reference made to fire at a plant in Castlebar, Co. Mayo.
- The hours of operation as permitted are unacceptable and would have a negative impact on the amenities of property in the vicinity. They are contrary to the recommendations in the Guidelines for Quarries and Ancillary Activities.
- HGV traffic would have an adverse impact on the N21 and is contrary to national policy in relation to control of development on national roads. HGV traffic is also a problem on local roads in the locality.
- There are concerns about surface and groundwater pollution. There is a small stream exiting the quarry site to the south which flows through farmlands and into the River Maine. The Maine River has 7 fish species including salmon and trout.
- A habitat survey should be carried out.
- The need for the development is queried. The applicant has permission for an asphalt plant at its site in Killarney where it has the raw materials necessary. It has a plant at its site in Millstreet. There is another plant at a quarry in Tralee.
- The site notice erected was not visible from the road with the notice placed in a national newspaper. The applicant has not made any attempts to be a 'good neighbour'. No public consultation was undertaken.
- It is queried why an EIS wasn't required.
- Ballymacelligott Caves System and Ballyegan are sites of Geological Interest.
- There is a ringfort in the quarry.
- The proposal is contrary to the broad vision of the regional planning guidelines.

6.2. Applicant Response

The submission by SLR on behalf of the applicant can be summarised as follows:

- There is no asphalt plant at the applicant's site in Killarney. The subject site is more centrally located to serve its customers in the region.
- The site is equipped for an asphalt plant which was permitted in the 1970s. It was temporarily closed in 2011.
- The proposed operating hours outside normal working hours is based on the requirements of contracts issued by the local authorities and TII/NRA in order to minimise traffic impacts on the road network.
- A Noise Impact Assessment was submitted. The daytime and night-time emission levels are unlikely to be exceeded. The resultant increase in noise level is unlikely to be perceptible at nearby noise sensitive receptors when mitigation measures are implemented.
- The emissions to air will be subject to the requirements of the Air Pollution Licence under the Air Pollution Act 1987 and Licensing of Industrial Plant Regulations 1988. An Air Dispersion Model was carried out which concludes that emission concentrations would be substantially below the maximum emission limit values used in the study.
- Traffic will not be increased above the historic permitted quarry traffic volumes (100,000 truck volumes per annum). It is anticipated that the traffic generated by the asphalt plant would peak from 8 to 12 truck loads per hour, depending on demand and the construction programme for the major road schemes. As the combined quarry and asphalt plant traffic will not increase above historic quarry traffic levels, there will be no significant traffic impact. It is likely there will be a reduction in traffic movements over time as recycled materials are delivered to the plant using a system of back loading whereby trucks which previously returned empty to the asphalt plant are used to pick up or collect excavated /planed surfacing materials for recycling purposes.
- The site is not located within or in the vicinity of a designated site. The site has been subject to various degrees of disturbance and is largely devoid of vegetation with the exception of a small area of scrub and recolonising bare

ground. There is no watercourse on the site. The Mweennalaa River is immediately east of the site and flows in a southerly direction to Fiddane 22 before flowing into the Maine River which then continues in a south-eastern direction before entering Castlemaine Harbour SAC and SPA c. 16.5km from the site.

- There will be no discharge from the proposed plant to the stream. All surface water from the plant area and surrounding quarry will be directed into the existing quarry void.
- The video footage submitted by Mr. Foran dates from 1994/95. Since then a landscaped screening berm has been constructed along the quarry perimeter.

6.3. Planning Authority Response

The submission can be summarised as follows:

- The site notice was considered to comply with the legislative requirements.
- The hours of operation permitted strike an appropriate balance between protecting amenities of property owners and allowing the development to function.
- Conditions 4, 9, 10 and 11 are considered adequate to protect residential amenities against dust and noise.
- Permission was sought and granted for houses when the quarry was in operation.
- The proposed plant and stack will be visible but it is considered that it will not create a significant visual impact as it will be viewed from a distance as part of a cluster with the existing quarry structures.
- The permission for an asphalt plant in Killarney is noted. Each application is assessed on its merits.

6.4. Observations

Observations have been received from:

1. Patrick Gerard Dowling

2. Paula & Oswald Luck
3. Mary O'Connor
4. John A. O'Connor
5. John & Helen Divane
6. Sandra Burke
7. Chris Power
8. Tracey & Padraig Power
9. Karen Cremins
10. Laura O'Brien
11. Catherine O'Brien
12. Niamh Ni Dhuill
13. Denis Reidy
14. P.J. Dollery
15. Ellen Higginson

The submissions can be summarised as follows:

- The proposal would result in heavy industrial activity. It would adversely affect the amenities and value of property in the vicinity.
- The applicant has not made it clear whether it intends to further excavate in the quarry. The quarry should not be re-opened.
- Noise, dust and odour will have an adverse impact giving rise to health concerns.
- The proposed operating hours are excessive and would have an impact on amenities of adjoining property.
- There are concerns that the proposal could constitute a major hazard.
- The proposal will have an adverse impact on local ecology. Peregrine Falcons reside in the vicinity of the quarry.

- Treatment of water runoff is queried. The stream to the south of the site flows into the River Maine which has many fish species. Groundwater is vulnerable.
- The traffic from the proposal, coupled with the Ballykill Sales Mart at Kilsallagh, will overwhelm the local road network. No restrictions were placed on use of the local road network. Shortcuts were taken along the local roads.
- The entrance to the site constitutes a traffic hazard.
- There is an important cave system running through the area. Any activity at the site has effects on these cave systems. Prescribed bodies should have been consulted.
- There is a ringfort in the quarry which needs to be protected.
- The applicant did not consult with local residents.
- The site notice was not placed where it was visible from the road. Revised public notices should have been required following the further information response. It is queried whether the public notices should have had reference to an application for an IPC licence and a waste licence.
- The need for the asphalt plant is queried.
- It is queried whether the planning application has been climate proofed in terms of adaptation in line with the County Council Draft Climate Adaptation Strategy.
- An EIAR should have been prepared.
- Kerry Airport was not invited to make a submission.

6.5. Section 131 Notices

As the Board considered that the proposal may have an impact on an SAC and SPA certain prescribed bodies were invited to make a comment on the appeal.

No responses received.

The Irish Aviation Authority was also invited to make a submission as the Board considered that the proposal may have an impact on Kerry Airport. The response

thereto notes that the site is within the safeguarding zone of the airport. It referred the correspondence to the Aerodrome Operator for their review.

7.0 **Assessment**

I consider that the issues arising in the case can be assessed under the following headings:

- Context and Background
- Nature and Extent of Development
- Emissions
- Operating Hours
- Other Issues
- Appropriate Assessment

7.1. **Context and Background**

From the planning history details available a limestone quarry has been long established at the site covering an area of approx. 34 hectares and accessed from the N21. Permission was previously secured for an asphalt plant dating back to 1977 which was subsequently replaced by a mobile system in 1999 under planning ref. 127699.

As evidenced on day of inspection the quarry is not in operation and by reason of the prevailing site conditions, including the quarry void rebounded to the natural water level, it does not appear to have been in operation for a considerable period of time. This fact is confirmed by the agent for the applicant in its response to the further information where it is stated that the quarry has not been operational since 2011 - a period of 8/9 years. The issue of abandonment as raised by a number of the 3rd parties and observers and noted in the Local Authority Planner's report is therefore a moot point. The agent for the applicant did not counter the assertions in its response to the grounds of appeal. Notwithstanding, I do not consider that this or issues of operation and compliance with conditions attaching to the quarry are before the Board for adjudication at this juncture.

7.2. Nature and Extent of Development

The proposal before the Board, entailing an asphalt plant, effectively comprises a manufacturing activity. Whilst there are locational advantages in locating this type of industry within a quarry where aggregate as a raw material for the plant is readily available, it is not an essential requirement. Therefore, any proposal for such type development needs to be assessed on its own merits and an application should be accompanied by adequate information so as to allow for a proper assessment. In my opinion this is not the case in this instance where over reliance is placed on the established quarry operation, the parameters set for same in the Section 261 registration, and the fact that there was an asphalt plant on the site in the past.

At the outset no details are provided as to the anticipated output from the plant. From the details provided in the Planning and Environmental Report accompanying the application the proposed asphalt plant has a maximum output of 240 tonnes per hour of ordinary road mix with a finished product temperature of 160°. On the basis of the operating hours as permitted by the planning authority theoretically an annual output of in excess of 500,000 tonnes could be produced. On the other hand, should reliance be had on the anticipated use of 20,000 tonnes of Recycled Asphalt Products (RAP) an output of approx. 62,000 tonnes is estimated based on the TII specifications which currently permits the use of up to 30% RAP in road surfacing materials. This level of extrapolation which can produce significantly different potential outputs is far from satisfactory.

No detail is provided on quantities of aggregate required save for the reference to use of Recycled Asphalt Products. I also submit that the information accompanying the application is materially lacking in detail as to whether aggregate is to be sourced within the quarry site with the applicant remaining somewhat vague in its response to the further information request on the matter. As per Figure FI3 submitted by way of further information in the region of 2 hectares of the overall 34 hectare site remains available for quarrying which would be to a depth of 1 metre above the water table. No detail is provided as to the anticipated volume of material available therein. The agent for the applicant does not elaborate on same save to say that the necessary constituent materials will be mainly imported to the site if they can't be won from the quarry extraction area. Where such materials would be imported from would be

relevant to allow for an assessment on the impacts in terms of access and traffic volumes.

In terms of traffic volumes it is stated that the movements will not be increased above the historic permitted quarry traffic volumes of 100,000 truck movements per annum. This reliance is not acceptable. Whilst details are given that the traffic generated by the proposed plant would peak from 8 to 12 truck loads per hour depending on demand and the construction programmes for major road schemes with the potential for 'back loading' in terms of vehicles bringing materials for recycling to the plant, this does not appear to take account of vehicular movements associated with the importation of aggregate, if required, whilst details on anticipated vehicular movements outside the historic operating hours for the quarry are also required. As noted, permission is being sought for operation on 40 days outside normal operating hours.

With respect to the use of recycled asphalt products (RAP) as referenced above, the material to be imported is bituminous material EWC 17 03 02. Article 27 of the European Communities (Waste Directive) Regulations, 2011, allows an economic operator to decide, under certain circumstances, that a material is a by-product and not a waste. Article 27 was introduced into Irish law to implement article 5 of the 2008 Waste Framework Directive (2008/98/EU). Decisions made by economic operators under article 27 must be notified to the Environmental Protection Agency. The Agency is required to maintain a register of notified decisions.

I note from the details available on the register to date <http://web.epa.ie/Article27Register/> that road planings arising from road re-surfacing contracts are listed as such a by-product material by both the applicant and other operators with the material brought to various asphalt plant locations around the country dating back to 2012. In only one instance (ART27-0048 in 2013) did the EPA determine the material to be waste.

On this basis, therefore, it can be extrapolated that the 20,000 tonnes per annum will reasonably comprise of a by-product and not a waste. However as to why the agent for the applicant saw fit to make reference to the possible requirement of a waste permit application for Class 7 and/or Class 10 activities adds a level of ambiguity.

7.3. Emissions

In addition to the historic noise monitoring from 2010 referenced in the planning report accompanying the application when the quarry was in operation, a Noise Impact Assessment was prepared which provides survey details from December 2018. This was supplemented by further surveys conducted in March 2018 with a revised impact assessment submitted by way of further information. The surveys undertaken were between the hours of 12 noon and midnight. I note that a number of 3rd parties and observers consider one of the days not to be representative due to the increased vehicular movements on the adjoining road network generated by the Ballykill mart. I submit that including traffic generated by the mart which also operates in the evening, is acceptable in establishing baseline conditions.

Notwithstanding, as expected noise traffic along the N21 dominates.

Table 4.4 of the revised document is stated to provide for an assessment of when both quarrying operations and plant are operating during daytime hours. I submit that the elements included in same do not appear to provide for a proper assessment in that vehicular movements associated with the quarrying operation in its own right nor the concrete plant have been accounted for.

There is an absence of any definitive information on the 'out of hours' operation envisaged for up to 40 days per annum sought as part of the application save for reference by the agent for the applicant that to *facilitate night time works by road contractors production of materials at the asphalt plant can range in duration from 2 to 3 hours per night to all night long on occasions*. This does not appear to have been accounted for in the revised noise impact assessment whereby baseline noise levels were recorded for the period between 12 noon and 12 midnight only (see Table 3-1).

I also note that no consideration appears to be given to noise arising from vehicular movements especially in the context that the aggregate serving the plant may largely be imported into the site in addition to vehicular movements envisaged to facilitate the transport of the asphalt material off site during night time periods for which permission is being sought .

On the basis of the above I consider that there is insufficient information to allow for an assessment of the worst case scenario in terms of impacts on adjoining

residential amenities especially with regard to proposed night time and early morning operations.

In terms of emissions to air and concerns raised in terms of health the plant would be subject to the requirements of an Air Pollution Licence under the Air Pollution Act 1987 and Licensing of Industrial Plant Regulations 1988. An Air Dispersion Model for the plant and is attached in Appendix A of the report accompanying the planning application. It concludes that the emissions from the plant will result in observed emission concentrations substantially below the maximum emission limit values used in the air quality modelling study with no significant impact on the local environment or health of the local community predicted.

An Odour Impact Assessment was submitted by way of further information which assumed a worst case emission scenario with the asphalt plant operating continuously during normal working hours with no seasonal variation in output. It concludes that emissions from the plant with efficient operation of the aggregate dryer burner, will result in observed fugitive odour emissions substantially below the emission calculations used in the modelling study. The study concludes that no odour nuisance will occur beyond the quarry boundary.

The details provided with the application in terms of baseline conditions referenced dust deposition monitoring results in 2010 when the quarry was still in operation. As noted by a number of the appellants and observers these would not represent the prevailing conditions over the last 8/9 years since quarrying activities has ceased. Notwithstanding I consider that this matter could be addressed by way of condition should permission be granted.

In terms of drainage any surface water runoff from the plant is to be directed to the quarry void via a hydrocarbon interceptor with fuel storage tanks to be bunded. No discharge is proposed to the Mweennalaa River which is c. 100 metres to the east.

7.4. Operating Hours

Of material concern to 3rd parties and observers is the applicant's request in terms of operating hours of the asphalt plant.

For the Board's information I note that by way of the Section 261 quarry registration under ref. QY009 operating hours are stated to be between 0700 and 2000 with loading and off site haulage between 0600 and 2000 with hours required to serve

exceptional customer requirements stated to be between 0500 and 2200 Mondays to Saturdays. The planning authority did not attach any condition to the registration addressing operating hours. It would therefore appear that the quarry has been able to operate within the above hours without constraints. I note that more restrictive hours were applied to the concrete batching and readymix concrete plant which was the subject of an appeal under PL08.110118 with stipulated operating hours between 0700 and 2000 Monday to Friday and 0700 to 1800 Saturday. Notwithstanding, all exceed the recommendations of the 2004 Quarries and Ancillary Activities Guidelines which set out normal operating hours of 0700-1800 Monday to Friday and 0700-1400 on Saturdays (section 4.7).

As noted above the assessment of the proposed development on its merits as a manufacturing activity is appropriate.

The applicant is seeking to operate the asphalt plant between the hours of 0600 to 1900 Monday to Saturday and to provide for occasional operation of the plant outside these working hours up to a maximum of 40 day per annum. It is noted that asphalt must be laid hot in order to ensure adequate compaction and is generally necessary to load asphalt in relatively small batches so that it can be delivered and laid within the appropriate timeframes. The timing, spacing, intensity and concentration of the asphalt production operations is dependent upon the demands of contracts won by or awarded to the applicant. To facilitate night time works by road contractors, production of materials at the asphalt plant can range in duration from 2 to 3 hours per night to all night long on occasions.

In the applicant's experience the weather during the months of December, January and February is generally not suitable for laying of asphalt. Therefore it is likely that only occasional (if any) operations will be required outside of normal working hours at the plant during these months. It is envisaged that the out of hours operations will mainly be required from March to November. It is contended that this, out of necessity, also includes operations on Sunday day time and public holidays as and when required by a specific roadworks contract. However, it is the applicant's experience that such works would not normally be undertaken on Sunday or public holidays.

The applicant in support of its case refers to the Board's decision granted under PL04.244651 which facilitated such out of hours operation of an asphalt plant in Co. Cork on not more than 40 days in any 12 month period with notification of residences within 1km of the plant of any proposed out of hours operations giving at least 10 days prior notice.

Notwithstanding, I submit that in the absence of a robust assessment in terms of noise as detailed above, sufficient evidence has not been provided to support the view that the amenities of adjoining residential properties would not be adversely impacted upon by the proposed hours of operation specifically the out of normal hours operations required for up to 40 nights per year. Should the Board be disposed to a favourable decision I recommend that a condition precluding same be attached.

7.5. Other Issues

7.5.1. Visual Impact

A visual appraisal was submitted by way of further information. The site is within an area zoned rural general and is not designated as being of specific visual amenity. Whilst the asphalt plant will be visible from properties on the adjoining local road network, notably those on local road L6543 to the west and from the more elevated ground to the north along local road L02020 on the opposite side of the N21, I submit that in the context of the existing quarry plant visible, notably the concrete batching plant and other buildings in the vicinity, it would not give rise to a material adverse impact as to warrant a refusal of permission on such grounds.

7.5.2. Need for Environmental Impact Assessment Report

An asphalt plant does not come within a class of development set out in Schedule 5 of the Planning and Development Regulations, 2001, as amended, for which Environmental Impact Assessment is required.

7.5.3. Archaeology and Geological Sites

A recorded monument KE02937 to the south of the site as delineated outside the red line but within the overall holding is noted to have been removed by the quarrying operation. Two further recorded sites to the west, also within the overall quarry site are also noted to have been removed as a consequence of quarrying.

In view of the nature and extent of the quarry at the site it is not anticipated that the placement of an asphalt plant, in itself, would have any material impact on geological features in the vicinity.

7.5.4. *Ecology*

The site is within an area that has been extensively quarried and is not within a European Site or NHA. I refer to the AA-Screening below.

7.5.5. *Public Notices*

The adequacy of the site notice location and absence of a revised newspaper notice following further information have been queried. I note that the Planning Authority was satisfied that the public notices were in accordance with the requirements of Articles 18 and 19 of the Planning and Development Regulations 2001, as amended. As the appellants and observers have engaged in the planning process culminating in this appeal I submit that their 3rd party rights have not been compromised.

There is no statutory requirement for the applicant to engage in public consultation prior to the lodgement of the application.

I note that the Irish Aviation Authority was invited to make a submission on the appeal. It referred the correspondence to Kerry Airport for review. No submission has been received.

7.5.6. *Climate*

Details are provided in support of the application as to the benefits of the addition of Recycled Asphalt Plant including a reduced requirement to use primary aggregates, a reduction in carbon dioxide (approx. 50kg of CO₂ is generated by tonne of asphalt produced using primary aggregates compared to 28kg of CO₂ per tonne of asphalt produced using RAP) and improved energy efficiency of the plan.

7.6. **Conclusion – Planning Considerations**

On balance and in view of the above I consider that the detail provided in support of the application is materially deficient. To rely on the fact that the location of the manufacturing operation is within a site which was last used as a quarry and which historically accommodated a mobile asphalt plant does not, and cannot, exonerate the applicant from providing the necessary details in terms of the nature and extent of the development so as to allow for a proper assessment having regard to the

nature of the receiving environment and the properties in the vicinity. Thus, on the basis of the information available, I am not satisfied that the proposal would not have an adverse impact on the amenities of the area and property in the vicinity and I recommend refusal on this basis. The Board may see fit to seek further information to address the material deficiencies.

7.7. Appropriate Assessment – Screening

The application is accompanied by an Appropriate Screening Report which was amended in a submission to the planning authority received on 14/08/19.

Project Description and Site Characteristics

The proposal is for an asphalt plant on a site within a limestone quarry to the south of the N21. The quarry void is now flooded due to the return to natural water levels. There are no watercourses within the site with the nearest being the Mweennalaa Stream c. 100 metres to the east.

Natura 2000 Sites, Qualifying Interests and Conservation Objectives.

1. Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (site code 004161) is approx. 2 km at its nearest point. The qualifying interest is the Hen Harrier.
2. The Lower River Shannon SAC (site code 002165) is c. 6km to the north. The qualifying interests comprise a mix of fresh and sea water habitat and species.
3. Ballyseedy Wood SAC (site code 002112) is c. 8km to the west of the site. The qualifying interest is alluvial forests.
4. Slieve Mish Mountains SAC (site code 002185) is c. 9km to the south-west. The qualifying interests comprise a number of habitats and species.
5. Tralee Bay And Magharees Peninsula, West To Cloghane SAC (site code 002070) and Tralee Bay Complex SPA (site code 004188) are c.13.5 km to the west of the appeal site. The qualifying interests are a mix of fresh and sea water habitats and species

6. Castlemaine Harbour SAC and SPA (site codes 00343 and 004029) is c. 13 km to the south of the site. The qualifying interests are a mix of fresh and sea water habitats and species

Detailed conservation objectives have been drawn up for 5 of the 8 sites with generic objectives for the other 3. The overall aim of both the detailed and generic objectives is to maintain or restore the favourable conservation status of the said habitats and species.

Assessment of Likely Effects

The site is not within or adjacent to any designated site. Therefore, no direct impacts would arise.

In view of the separation distance and lack of hydrologic connection to

- Lower River Shannon SAC (site code 002165) is c. 6km to the north.
- Ballyseedy Wood SAC (site code 002112) is c. 8km to the west of the site.
- Slieve Mish Mountains SAC (site code 002185) is c. 9km to the south-west.
- Tralee Bay And Magharees Peninsula, West To Cloghane SAC (site code 0020270) and Tralee Bay Complex SPA (site code 004188) are c.13.5 km to the west

there is no potential for the designated sites to be indirectly affected by the proposed development.

Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA

(site code 004161) is approx. 2 km at its nearest point. The qualifying interest is the Hen Harrier. An odour assessment undertaken concludes that the potential for fugitive odour emissions beyond the quarry boundary will not occur. The results of the air quality modelling for the plant demonstrate that the annual average SO₂ PEC values with maximum emissions from the plant are below 5 ug/m³, or 20% of the annual NAQs of 20 ug/m³ beyond the quarry boundary. The emissions outside the boundary of the site are well below the NAQs values for ecosystems and are below the levels of emissions that could result in effects to the qualifying interest. Due to the separation distance, the intervening land uses and the N21 National Primary

Road the noise arising from the asphalt plant would not have any impact on the Hen Harrier.

Castlemaine Harbour SAC and SPA (site codes 00343 and 004029) is c. 13 km to the south of the site. The Mweennalaa River which is c. 100 metres to the east of the subject site flows in a southerly direction for a distance of 3.2km before joining the Maine River. The Maine River joins the SAC c. 16.5 km hydrologic distance to the south. Surface water is not proposed to discharge to the stream therefore there is no risk of sedimentation or pollutants being emitted to the watercourse during construction and operation of the asphalt plant. Discharge is proposed to the flooded quarry void. In view of the separation distance and absence of discharge to the Mweennalaa Stream there is no potential for the designated site to be indirectly affected by the proposed development.

In terms of cumulative effects, I have regard to the provisions of the current Kerry County Development Plan. I am not aware of any large planned or permitted development in the vicinity.

Screening Statement and Conclusions

It is reasonable to conclude that on the basis of the information on file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect European sites nos. 004161,00343 and 004029 in view of the sites' conservation objectives and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

In reaching this conclusion, I took no account of mitigation measures intended to avoid or reduce the potentially harmful effects of the project on any European Sites.

8.0 Recommendation

Having regard to the foregoing I recommend that permission for the above described development be refused for the following reasons and considerations.

9.0 Reasons and Considerations

Having regard to the location of the asphalt plant in a quarry that has not been operational for in excess of eight years, in close proximity to residential properties, and to the lack of adequate information presented in terms of capacity of the proposed asphalt plant, the quantities and source of aggregate required to service the said plant and vehicular movements that would be generated, the Board is not satisfied that the proposed development would not seriously injure the amenities of properties in the vicinity by reason of noise and general disturbance. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Pauline Fitzpatrick
Senior Planning Inspector

February, 2020