

To: Board	Date: 29 April 2016
From: Gavin Clabby	
Subject: Air Pollution Act appeal – Mortimor Quarries, Belclare, County Galway (Reg. No. E0001-01)	
Approved for Board by:	Frank Clinton
Cross Office Implications:	No

Recommendation: The Board is requested to APPROVE the decision recommended hereunder with respect to the appeal submitted to the Agency, relating to an Air Pollution Act licence granted to Mortimor Quarries by Galway County Council, and to APPROVE the approach to be taken by the Agency for future appeals, with regard to planning based objections, and the approach to be taken to the requirements of Appropriate Assessment.

Introduction

New legislative requirements for the Agency came into effect with the enactment of the Environment (Miscellaneous Provisions) Act 2015 (hereafter Act of 2015). As of the 31 August 2015, the Agency is the statutory authority for appeals in relation to Air Pollution Act (APA) licences. Prior to this date the statutory authority for these appeals was An Bord Pleanála (ABP).

Air Pollution Act licences are single media licences, essentially for the purposes of compliance with the relevant air quality standards¹, and are granted by local authorities under the Air Pollution Act 1987 as amended.

The following appeal was lodged; initially with ABP for determination, on 17th July 2015:

Appeal in relation to a decision by Galway County Council to grant a licence under the Air Pollution Act 1987 (reference number AP11/14), to Mortimor Quarries for atmospheric emissions at a site located Belclare, Tuam, County Galway.

¹ The relevant air quality standards (AQSS) are specified currently in the Air Quality Standards Regulations 2011, SI 2011/180. In addition to AQS requirements, it is worth noting that licenced emissions, under the Air Pollution Act 1987 must also comply with any relevant emission limit values specified in law. The industrial plant producing the emissions must also utilise 'best practicable means' to limit such emissions.

As the appeal was not yet determined at the time the relevant sections of the Act of 2015 came into force, ABP decided that the above appeal should be forwarded to the Agency for determination (in accordance with section 25 of the Act of 2015).

The Agency has no direct competence to assess the particular matters of an appeal which are of a planning nature, and in order to clarify the scope of this and future appeals, sought the assistance of ABP.

By way of assistance, Mr Paul Caprani, Senior Inspector, ABP, assessed the above appeal in its entirety and on the 2 March 2016, submitted a full report to the Agency, including an appendix containing the original planning report for the asphalt plant, a site location map and site photographs. Mr Caprani's report and site photographs are attached to this memorandum.

Report on the assessment of Appeal Reg. No. E0001-01

As part of the assessment of the appeal, I have evaluated the above ABP report and supporting documentation submitted by ABP, as well as the original appeal documentation submitted by the Appellant (Antóin Ó'Comáin) and all relevant appeal correspondence.

This inspector's report provides comment and recommendations, following examination of the appeal, and following discussions with the ABP Inspector. I have also consulted with Agency inspectors Ms Deirdre French and Dr Karen Creed in relation to the relevant Appropriate Assessment requirements.

This report considers one valid third party appeal (Antóin Ó'Comáin). No other appeals in relation to the licence in question were submitted.

(For further details on the appeal, please refer to the ABP appeal report attached.)

Background Information

Appeal report – general information

The licence relating to this appeal is for a proposed asphalt plant which is to be located at a quarry at Belclare, County Galway. The ABP report gives an introduction which provides general background information and a site description of where the proposed asphalt plant is to be located. This information was supplemented by an excel file containing photographs from a site visit made by Mr Caprani on the 18 February 2015.

The report describes the proposed asphalt plant and the characteristics of its emissions, the relevant class of activity, and details of the licence granted to Mortimor Quarries by Galway County Council (GCC).

Giving details of the APA licence associated with this appeal, Mr Caprani makes the distinction that the licence is for the purposes of licensing industrial plant (in this case

an asphalt plant) with respect to emissions to air, and in no way relates to revisiting the extant planning permission for the asphalt plant.

The report also provides details on the APA licence application: details of process air pollution control measures and monitoring, as well as a detailed air impact assessment. No submissions were received by GCC during its assessment of the licence application. GCC issued a licence (ref. AP-11-14) on 23 June 2015, specifying ELVs for the main stack, as well as specifying dust deposition limits, monitoring requirements and fuel types.

In addition the ABP report provides details of the associated planning permission for the asphalt plant.

The ABP report also includes an Appropriate Assessment screening for the proposed asphalt plant. No Appropriate Assessment screening was carried out by, or on behalf of, the consenting authority (GCC).

Appeal Submitted to ABP 17 July 2015 and forwarded to the Agency on the 28 September 2015

The grounds of the appeal were based on eight points of objection to the decision by GCC to grant an APA licence to Mortimor Quarries.

Two of the points of objection were considered to be planning matters.

The remaining six points relate to air quality impact, control and monitoring, fit and proper persons, and financial contribution.

Observations on the Appeal: Submitted to ABP 18 August 2015

TMS Environmental Limited, on behalf of the applicant, submitted a response addressing all points of objection.

Further submission by the Appellant: Submitted to ABP 10 Sep 2015

The Appellant, upon the request of ABP made a further submission in response to the applicant's submission above, making further reference to planning requirements.

Assessment of Third Party Appeal

Planning compliance:

It is submitted by the Appellant that the quarry has no record of consistently complying with planning conditions.

Planning objections are not be considered by the Agency during the consideration of an appeal in relation to an APA licence. Under the Air Pollution Act 1987, a local authority may issue a licence for the operation of certain industrial plant provided it is satisfied that it does not cause air pollution. As the competent authority for appeals to such licences, the Agency is similarly limited to the issue of air pollution (as defined in the section 4 of the Air pollution Act 1987 ²) due to the operation of the industrial plant, and is not required to consider the wider requirements of any planning permission for the industrial plant or the site where it is located.

Recommendation: **No change.**

It is submitted by the Appellant that the granting of the APA licence facilitates the ongoing intensification of activity at a quarry that the Appellant considers has an inappropriate planning permission.

As previously stated planning objections are not be considered by the Agency during the consideration of an appeal in relation to an APA licence. Furthermore, the granting or refusal of the APA licence will not affect the permitted level of quarrying allowed under the current planning permission.

Recommendation: **No change.**

Cumulative impacts not taken into account:

It is submitted by the Appellant that the cumulative traffic and environmental air emissions of the Mortimor's quarry and the neighbouring quarry was not properly assessed in combination with the proposed industrial plant.

The ABP appeal report, and the air quality assessment submitted as part of the licence application, demonstrates that the cumulative impact of the applicant's quarry and the neighbouring quarry was assessed by the applicant. Baseline studies carried out by the applicant took into account the impact of quarrying at both premises. The

² "Air pollution" in this Act means a condition of the atmosphere in which a pollutant is present in such a quantity as to be liable to –

- (i) be injurious to public health
- (ii) have a deleterious effect on flora or fauna or damage property, or
- (iii) impair or interfere with amenities or with environment.

neighbouring quarry does not operate licensable industrial plant, so modelling only included the plant at the applicant's quarry. Having assessed the relevant documentation, I am similarly satisfied that the cumulative impact of traffic from both quarries is considered negligible. Furthermore, I am satisfied that cumulative impacts were taken into account by the local authority during the licence application assessment.

Recommendation: **No change.**

Stack height:

It is submitted that the height of the stack is insufficient for location of plant within quarry.

The height of the proposed stack, as modelled by the applicant, proved suitable for the adequate dispersion of pollutants (predicted ground level concentrations in compliance with relevant AQSS). This modelling took into account the elevated terrain in the vicinity of the proposed plant. Having assessed the relevant documentation, I am similarly satisfied that the height of the stack is sufficient to allow adequate dispersion of the licensed industrial plant emissions.

Recommendation: **No change.**

Fuel usage:

It is submitted that there is insufficient control in the licence to ensure that only light fuel oil (and not heavy fuel oil) is used in the operation of the industrial plant.

The ABP appeal report states the licence is clear and unambiguous with respect to the fuel types that may be used in the asphalt plant (light fuel oil, gas oil and natural gas) and that failure to comply with the requirements would be the subject of enforcement proceedings. Having assessed the relevant documentation, I am similarly satisfied that the licence provides for adequate control of fuels used for the licensed industrial plant.

Recommendation: **No change.**

Fit and Proper:

It is submitted that the licensee is unlikely to be the operator of the industrial plant, and that the eventual operator may not have sufficient expertise operate the industrial plant.

The ABP appeal report states that there is no basis for the appellant's contention that the operator will not have sufficient expertise to run the asphalt plant. Under the terms of the licence, it is incumbent on the licensee to ensure that the industrial plant is operated in such a manner that it will not cause air pollution, as it is defined under the Act of 1987. Having assessed the relevant documentation, I am similarly satisfied that the applicant will have, or avail of, the appropriate expertise to operate the licensed industrial plant.

Recommendation: **No change.**

Annual contribution:

It is submitted that the annual contribution to the local authority is insufficient for the assessment of licensee compliance.

This assessment concludes that it is the local authority's decision as to the appropriate contribution to be made by the licensee. I am satisfied the local authority is best placed to decide the appropriate annual contribution for APA licensees, and that furthermore the local authority will carry out the appropriate monitoring regardless.

Recommendation: **No change.**

Monitoring requirements:

It is submitted that the monitoring requirements, as specified in the licence, appear to be wholly inadequate for the proposed development.

The appeal report concludes that the licence specifies sufficiently detailed and adequate monitoring requirements, and that failure to comply with the requirements would be the subject of enforcement proceedings. Having examined the terms of the licence, I am similarly satisfied that the licence specifies adequate monitoring for the purposes of licence enforcement.

Recommendation: **No change.**

Appropriate Assessment

The industrial plant is in a rural location in Belclare, 6km south-west of Tuam in County Galway. The proposed emissions from the plant include the following:

- Fugitive dust emissions from the drying process carried out on the rotary drums.
- Fugitive dust emissions from aggregate storage and transportation.
- Bitumen fumes through the vent pipes on the bitumen storage tanks.
- Process emissions of NOX, NO₂, CO₂, CO, and VOC's from the chimney stack.

There are a number of European sites located in the vicinity (within 15 km) of the activity: Lough Corrib SAC and SPA (Site codes: 000297 and 004042), Shrute Turlough SAC (Site code: 000525), Cloughmoyne SAC (Site code: 000479), Mocarha Lough SAC (Site code: 001536). However, it is considered that only the European sites at Lough Corrib are considered within the zone of influence of the installation's emissions (see appendix). This zone of influence was determined on the basis that air emissions will have minimal impact beyond the boundary of the installation, and that furthermore there are no process discharges to water/groundwater from the industrial plant.

A screening for Appropriate Assessment was undertaken to assess, in view of best scientific knowledge and the conservation objectives of the site, if the activity, individually or in combination with other plans or projects is likely to have a significant effect on any European Site. In this context, particular attention was paid to the European sites in the Lough Corrib complex.

The Agency considered, for the reasons set out below, that the activity is not directly connected with or necessary to the management of those sites as European Sites and that it can be excluded, on the basis of objective scientific information following screening under this Regulation, that the activity, individually or in combination with other plans or projects, will have a significant effect on any European site and accordingly determined that an Appropriate Assessment of the activity is not required.

This determination was made in light of the scale and nature of emissions to air from the industrial plant, and their distance to terrestrial habitats. Air dispersion modelling demonstrates that emissions from the proposed activity will not result in ground level concentrations which exceed the relevant air quality standards for the protection of vegetation and the environment.

Recommendation

- (1) It is recommended that the Agency, in accordance with section 34 of the Air Pollution Act 1987, direct Galway County Council to grant the licence under the Air Pollution Act 1987 (reference number AP11/14), to Mortimor Quarries for atmospheric emissions at a site located at Belclare, Tuam, County Galway.
- (2) In making the above decision the Agency carried out an Appropriate Assessment screening (a screening was not carried out by Galway County Council at the licence application stage). It is recommended that the Agency communicate with all local authorities, recommending an Appropriate Assessment screening should be completed by the local authority as part of the assessment of the licence application.
- (3) It is also recommended to the Board that the Agency should assess future appeals in-house,
- (4) and furthermore publicise the fact that the Agency is not the competent authority for planning matters, and state for the record that it will only consider matters relating to the licensable activity and not matters relating to the associated planning requirements.



Gavin Clabby
Inspector ELP

Appendix

European Site (site code)	Distance/ Direction from installation	Qualifying interests (* denotes a priority habitat)	Conservation objectives
Lough Corrib SAC (Site code: 000297),	4 km east	<p>Habitats:</p> <p>Oligotrophic waters containing very few minerals of sandy plains (<i>Littorelletalia uniflorae</i>)</p> <p>Hard oligo-mesotrophic waters with benthic vegetation of Chara spp.</p> <p>Water courses of plain to montane levels with the <i>Ranunculion fluitantis</i> and <i>Callitricho-Batrachion</i> vegetation</p> <p>Semi-natural dry grasslands and scrubland facies on calcareous substrates (<i>Festuco-Brometalia</i>) (* important orchid sites)</p> <p>Molinia meadows on calcareous, peaty or clayey-silt-laden soils (<i>Molinion caeruleae</i>)</p> <p>Active raised bogs</p> <p>Degraded raised bogs still capable of natural regeneration</p> <p>Depressions on peat substrates of the Rhynchosporion</p> <p>Calcareous fens with <i>Cladium mariscus</i> and species of the <i>Caricion davallianae</i></p> <p>Petrifying springs with tufa formation (<i>Cratoneurion</i>)</p> <p>Alkaline fens</p> <p>Limestone pavements</p> <p>Old sessile oak woods with <i>Ilex</i> and <i>Blechnum</i> in the British Isles</p> <p>Bog woodland [91D0]</p> <p>Species:</p> <p><i>Margaritifera margaritifera</i> (Freshwater Pearl Mussel)</p> <p><i>Austropotamobius pallipes</i> (White-clawed Crayfish)</p> <p><i>Petromyzon marinus</i> (Sea Lamprey)</p> <p><i>Lampetra planeri</i> (Brook Lamprey)</p>	As per NPWS (2015) Conservation objectives for Lough Corrib SAC [000297]. Generic Version 4.0 Department of Arts, Heritage and the Gaeltacht (dated 13/02/2015).

		<p><i>Salmo salar</i> (Salmon)</p> <p><i>Rhinolophus hipposideros</i> (Lesser Horseshoe Bat)</p> <p><i>Lutra lutra</i> (Otter)</p> <p><i>Drepanocladus vernicosus</i> (Slender Green Feather-moss)</p> <p><i>Najas flexilis</i> (Slender Naiad)</p>	
Lough Corrib SPA (Site code: 004042),	4 km east	<p>Gadwall (<i>Anas strepera</i>)</p> <p>Shoveler (<i>Anas clypeata</i>)</p> <p>Pochard (<i>Aythya ferina</i>)</p> <p>Tufted Duck (<i>Aythya fuligula</i>)</p> <p>Common Scoter (<i>Melanitta nigra</i>)</p> <p>Hen Harrier (<i>Circus cyaneus</i>)</p> <p>Coot (<i>Fulica atra</i>)</p> <p>Golden Plover (<i>Pluvialis apricaria</i>)</p> <p>Black-headed Gull (<i>Chroicocephalus ridibundus</i>)</p> <p>Common Gull (<i>Larus canus</i>)</p> <p>Common Tern (<i>Sterna hirundo</i>)</p> <p>Arctic Tern (<i>Sterna paradisaea</i>)</p> <p>Greenland White-fronted Goose (<i>Anser albifrons flavirostris</i>)</p> <p>Wetland and Waterbirds</p>	As per NPWS (2015) Conservation objectives for Lough Corrib SPA [004042]. Generic Version 4.0 Department of Arts, Heritage and the Gaeltacht (dated 13/02/2015).

**Report for the EPA in Respect of an Air Pollution Licence for an Asphalt Plant
at Mortimer Quarries, Belclare, Tuam, County Galway.**

Licencing Authority: Galway County Council

Licencing Authority Reg. Ref.: AP-11-14

Applicant: Mortimer Quarries Ltd.

Agents on behalf of the Applicant: TMS Environment Ltd.

Type of Application: Air Emission Licence under S.32 of the Air
Pollution Act 1987

Licencing Authority Decision: Antóin Ó Conáin

Type of Appeal: Third Party

Date of Site Inspection: 18/2/16

Inspector: Paul Caprani (An Bord Pleanála)

1.0 INTRODUCTION & BACKGROUND

A licence is sought by Mortimer Quarries to permit atmospheric emissions through a 30 metre high chimney stack with a fitted fabric filter associated with an asphalt plant within an existing limestone quarry at Belclare, Tuam in north-east Galway. Galway County Council issued notification to grant a licence under the provisions of section 32 of the Air Pollution Act 1987. The Council's decision was subject to seven conditions. The decision of the Council was the subject of an appeal by Antóin Ó Conáin under the provisions of section 34 of the said Act. The grounds of appeal raised a number of issues with regard to a history of non-compliance with planning permissions within the quarry, a contention that intensification of quarry uses took place on site, air emission problems and potential monitoring issues associated with the licence.

The appeal was lodged initially with An Bord Pleanála for determination on 17th July 2015. However in accordance with the provisions of section 25 of the Environmental (Miscellaneous Provisions) Act 2015, the Board concluded that this matter fell to the Environmental Protection Agency for determination. It was subsequently agreed that the Board would offer technical assistance in respect of the appeal. In this regard I would refer to the memorandum of Mr. Green, Assistant Director of Planning dated 11th January 2016 which requested that the report prepared "*should be drafted in full as if it was still to be presented to the Board of An Bord Pleanála for decision*". This report below therefore will address all issues raised in the appeal both planning and environmental so as to provide a robust and comprehensive evaluation of the issues raised in the appeal. This report is accompanied by photo's together with photographic location index.

2.0 SITE LOCATION AND DESCRIPTION.

The appeal site is located within existing limestone quarry to the south of the small settlement of Belclare approximately 6 kilometres south-west of Tuam, County Galway. The quarry is accessed off a local road which runs north-westwards and meets the R333 (Tuam to Headford Road) approximately 1.5 kilometres north of the site entrance. The R333 links with the N17 (Galway Tuam Road) approximately 2.5 kilometres to the north-west of the site.

The existing quarry is extensive but has no direct frontage onto the public road. There is an adjoining quarry to the north-east (McTigues) Quarry. Mortimer's Quarry is currently active and covers an area of approximately

15.1 hectares. The north central portion of the site is the most deeply excavated area with a depth of approximately 20 metres below ground level. The southern portion of the site has been excavated to a depth of between 10 and 15 metres below ground level. Ground levels gradually rise to a stone wall boundary which runs along the western perimeter of the site. Staff offices, a canteen, vehicular repair area and fixed plant associated with the processing of stone are all located in the vicinity of the quarry entrance. Additional mobile crushing and screening equipment are located in the deepest part of the quarry centrally within the northern portion of the site.

The proposed asphalt plant which is the subject of the current atmospheric emissions licence, was the subject of a separate application and was granted by Galway County Council under reg. ref. 15/164. The asphalt plant is to be located approximately 60 metres to the south of the entrance, on the quarry floor adjacent to the eastern boundary of the site. The quarry face adjacent to the proposed asphalt plant is estimated to be 10-12 meters in height.

In terms of surrounding land uses, the site is surrounded by agricultural lands with the exception of the contiguous McTigues Quarry to the north-west. Natural woodlands/scrubland is located along the western boundary of the site. In terms of settlement there are no dwellings contiguous to any of the site boundaries off Mortimer's Quarry. The nearest dwelling to the proposed asphalt plant is approximately 250 metres to the east on the access road leading to the quarry. The nearest dwelling to the north (as the crow flies) is just less than 800 metres from the asphalt plant. The nearest dwelling to the south and west are approximately 700 metres and 1.5 kilometres away respectively. The highest concentration of dwellings in the surrounding area are located along the public road which runs towards the R333 to the south-east of the site.

3.0 PROPOSED LICENCE FOR ATMOSPHERIC EMISSIONS

As already stated Galway County Council have granted planning permission for an asphalt plant under reg. ref. 15/164. Details of this application are not contained on file. The current appeal before the EPA relates specifically to a licence sought under the provisions of the Air Pollution Act for atmospheric emissions from the asphalt plant to a 30 metre high chimney stack. It in no way relates to revisiting the extant permission for the asphalt plant. The licence is required in accordance with class 26 of the third schedule of the Air

Pollution Act - *“the production of tar and bitumen and the manufacturer of products containing them”*.

The asphalt plant is relatively large, producing approximately 120 tonnes of bitumen per hour and operating for approximately 11 hours per day, according to the information contained on file. Emissions from the production process will include the following:

- Fugitive dust emissions from the drying process carried out on the rotary drums.
- Fugitive dust emissions from aggregate storage and transportation.
- Bitumen fumes through the vent pipes on the bitumen storage tanks.
- Concentrations of NOX, NO₂, CO₂, CO, and VOC's from the chimney stack.

The emission characteristics are as follows:

- Normalised volume emissions (N/m³)
 - 44,000 m³/hr (optimum).
 - 52,000 m³/hr (maximum).
- Temperature – 100-130° C
- SO₂ – 500mg/ N/m³.
- NO_x - 400mg – 450mg/ N/m³.
- Particulates 20mg/ N/m³.

4.0 LOCAL AUTHORITY DECISION

The application was lodged with Galway County Council by TMS Environmental Limited on behalf of Mortimer Quarries on 20th August 2014. The application was accompanied by a report containing the following:

- A report setting out the process description of the asphalt plant.
- Details of process air pollution control measures and monitoring.
- Detailed drawings and elevations of the proposed asphalt plant.
- A detailed Air Impact Assessment.
- An Environmental Report.
- A newspaper notice.

No technical or other reports were prepared by Galway County Council in respect of the application. No letters of objections were received from third parties according to the information submitted by Galway County Council.

Galway County Council granted the air emissions licence for the asphalt plant (ref. AP-11-14) on 23rd June 2015 subject to seven conditions. In addition to the seven conditions ambient air and dust deposition limit values are set out in appendix A1 and A2 of the licence and are summarised below.

- Total dust deposition – 0.35 grams/meters squared/day.
- Maximum volumes to be emitted 100,000 N/m³ per hour.
- Temperature of emission max 150° C.
- Sulphur Dioxide (SO₂) 500 mg/ N/m³
- Nitrogen Oxides (NO_x) 450mg/Nm³.
- Dust 50mg/Nm³.
- Fuel type specification:
 - Light fuel oil < 1% w/w sulphur.
 - Gas oil < 0.2% w/w sulphur.
 - Natural gas.
- Appendix A3 sets out stack monitoring requirements.

5.0 ASSOCIATED APPLICATIONS

Mortimer Quarries also applied for and obtained planning permission for the asphalt plant on 5th February 2015. The planners report is attached as Appendix A a of this report. This application sought to construct an asphalt batching plant comprising of a number of open and closed storage aggregate bays, a cold feed drying and heating system, a dust collection system, a mixing tower a hot mix storage system, a filter feed system, a bitumen supply system and a 30m high stack. Galway Co Council granted permission for the plant subject to 14 Conditions. The decision was initially the subject of a third party appeal (An Bord Pleanala ref. PL07.244815). However this appeal was subsequently withdrawn and as such the permission for the asphalt plant stands.

6.0 GROUNDS OF APPEAL

An appeal was lodged under the provisions of section 34 of the Air Pollution Act 1987 by Antóin Ó Conáin. The grounds of appeal are outlined below.

- The applicant has a record of non-compliance with planning conditions.

- The registration process under section 261(7) was an inappropriate instrument to permit an intensification of use. Planning permission should have been sought under the provisions of section 34 of the Planning and Development Act 2000 (as amended).
- Cumulative air emissions resulting from both quarries have not been properly assessed in determining the licence.
- The fact that the asphalt plant is located on the quarry floor raises concerns that the 30 metre high stack is insufficient to allow adequate plume dispersion.
- There are insufficient controls in the licence to ensure that only LFO (Light Fuel Oil) is used.
- The quarry operator may not have the sufficient expertise to operate the asphalt plant. The operator of the asphalt plant requires specific expertise that could be beyond the capability of the quarry owner. Thus the operator of the asphalt plant may wish to establish a very different Macadam plant to that permitted. The competent Authority needs to scrutinise the operation of the plant in more detail.
- The annual contribution appears to be too small, having regard to the cost of such detailed analytical work necessary to ensure compliance.
- The monitoring requirements appear to be wholly inadequate for a development of this nature.

7.0 APPEAL RESPONSE

A response was received on behalf of Mortimer's Quarries by TMS Environmental Limited. A response is briefly summarised below.

- With regard to the issue of non-compliance, it is stated that the quarry operates in full compliance with its planning conditions.

- With regard to intensification of quarry use in the context of section 261(7) of the Planning and Development Act 2000, it is stated that the existing quarry has the correct and appropriate planning permission in place for the ongoing operation of the quarry as permitted. The extraction and processing rates of the quarry will not change as a result of the asphalt plant.
- With regard with cumulative air emissions, it is stated that the Air Impact Assessment Report submitted with the application assessed all potential environmental impacts including traffic air emissions. Current baseline air quality data was obtained and the data represents cumulative air emissions from both quarries (Mortimer Quarries and McTigue's Quarry adjacent).
- With regard to the height of the stack, it is stated that the air quality impact assessment report included a detailed air dispersion modelling. The model demonstrated that the stack height of 30 metres is more than adequate to ensure that air quality standards are easily complied with. It is also noted that the standard stack height for an asphalt plant is in the region of 15-18 metres.
- With regard to the type of fuel to be used it is stated that the air emission licence is very clear on what fuels can be used to power the asphalt plant and this is set out in Appendix A2 of the Licence.
- With regard to the issue of a beneficial operator, it is stated that the applicant has the requisite knowledge and expertise to operate the plant in question. Part of the commissioning process will include detailed training of a plant operator, detailed technical standard operating procedures together with ongoing training and maintenance. There is no reason to believe that the current site operator is not capable of successfully operating the asphalt plant.
- With regard to the issue of monitoring it is stated that conditions attached incorporate stringent monitoring requirements and are typical of those associated with air pollution licences.

7.1 Further Submission from Appellant

A further submission from the appellant was received by An Bord Pleanála on 10th September 2015 briefly summarised below:

The agent of behalf of Mortimer Quarries has offered no proof of compliance with planning conditions.

There is no restoration bond in place which is a serious breach of section 261(7). The quarry does not have the correct permission for the level of quarrying being carried out. The working and operation of the asphalt plant relies on the underlying site permission being valid. Concerns are reiterated that the applicant may not be sufficiently proficient in operating the asphalt plant.

8.0 EVALUATION

8.1 Non Compliance with Planning Conditions

The EPA is requested to note that obtaining a licence for atmospheric emissions under section 34 of the Air Pollution Act (1987) represents a completely separate legislative code to that of the Planning and Development Act 2000 (as amended). As such, any reference to non-compliance with conditions pertaining to the provisions of the Planning Acts are in no way relevant to the current application and appeal before the EPA. Galway County Council, and not the Agency, is the competent authority in dealing with issues regarding non-compliance with planning conditions, planning enforcement or other aspects of unauthorised development on site. The EPA are the sole Competent Authority involved in determining appeals under the Air Pollution Act as a result of recent legislative changes referred to in the introduction of this report. As such the EPA should restrict all deliberation as to whether or not the application for the subject licence in question would

- (i) Be injurious to public health.
- (ii) Have a deleterious effect on flora and fauna or damaged property.
- (iii) Impair or interfere with amenities or with environment.

As set out in section 4 of the Air Pollution Act.

Planning enforcement issues relating to the quarry are a matter for Galway County Council Planning Department and not the Agency.

It should also be noted that this particular licence application is directly associated with asphalt plant and not the quarrying activity itself. The asphalt plant has been the subject of a separate planning application and approval. As the photographs attached indicate, the asphalt plant has yet to be constructed on site and as such, issues arising in relation to non-compliance or unauthorised development do not, and presently cannot, arise in respect of the asphalt plant as it does not exist.

8.2 Intensification of Quarry Use

The appeal argues that section 261(7) was an inappropriate instrument to pursue an intensification of quarry use. Furthermore it is stated that any such intensification of use should have been applied for under the provisions of section 34 of the Planning Act rather than section 261(7) of the same Act. Again any such matters relating to the planning code are a matter for Galway County Council and where appropriate, An Bord Pleanála. These matters are not a material concern for the Agency in determining the Air emissions Licence. However no evidence has been submitted which indicates that an intensification of use has occurred at the quarry.

For the record the EPA may wish to note that the quarry in question was registered under the provisions of section 261 of the Planning and Development Act 2000 (as amended) in October 2005. In registering the quarry under the Planning Acts, it was determined by Galway Co Council that the quarry commenced operations prior to the appointed day (1st October 1964)¹. Thus as the quarrying activity commenced on site prior to the implementation of the Planning Acts the quarry is deemed to be in an 'established use' on the site in question, and by extension it is deemed has the benefit of planning permission.

Galway County Council also determined that, as an area in excess of 5 hectares was extracted on the subject site, subsequent to the implementation of the EIA Directive², the owner was required nevertheless to apply for

¹ Information submitted with the planning registration application indicated that quarrying activity commenced in 1954.

² The EIA Directive was implemented in Ireland under SI 349 of 1989 and SI 25 of 1990 on February 1st 1990.

planning permission and submit an Environmental Impact Statement. An application was lodged with Galway County Council and subsequently a notification to grant planning permission was issued by the local authority (reg. ref. 06/2275).

The decision of Galway County Council to grant planning permission for the quarry was the subject of multiple third party appeals (An Bord Pleanála reg. ref. PL07.222783). The Board upheld the decision of the Planning Authority and granted planning permission for the quarrying of limestone on the subject site. Therefore both Galway County Council and An Bord Pleanála deemed the provisions of section 261(7) to be an appropriate mechanism in which to authorise the quarry in question under the provision of the Planning Acts.

The above information merely sets out a background in relation to the planning status of the quarry in question. It is for information purposes only and is aimed as providing a planning context to some of the issues raised in the grounds of appeal. It is reiterated that the current licence application before the EPA in no way relates to the quarrying activities on site. It is further reiterated that the asphalt plant has been the subject of a separate planning application for which planning permission was granted by Galway County Council. It appears therefore that a valid planning permission exists for both the quarry in question and the asphalt plant for which the current air pollution licence relates. Issues in respect of any intensification of quarrying activity on site are in no way relevant to the current application for an air emission licence which is to be determined by the EPA.

8.3 Cumulative Impacts

The grounds of appeal argue that the cumulative impacts were not taken into consideration in assessing air emissions. The air quality assessment submitted as part of the environmental report to the local authority recognises that a quarry is located on adjacent lands to the north-west (McTigues Quarries). Baseline monitoring studies were carried out over a 28 day period at four locations along the boundary of the site (for exact details of location see Appendix 3 of Environmental Report submitted with the application). These baseline studies would have obviously taken into consideration dust deposition rates associated with both quarries and as such would have assessed the existing cumulative impacts associated with both quarries. The baseline studies indicate that the highest average dust deposition was recorded at location D1 - the common boundary between both quarries with an average deposition of 216 mg/m²/d. This is below the TA Luft limit of

350mg/m²/d which is generally regarded as an acceptable international standard in terms of cumulative dust deposition rates over a 30 day period. Other baseline survey location points along the north-east, south-east and western boundaries all recorded dust deposition rates considerably below the TA Luft limit (from less than 20mg/m²/d to 77mg/m²/d. The baseline studies therefore assessed the cumulative impacts from both quarries during the operational phase and thus deposition rates within the confines of the quarry are deemed to be acceptable and below the limit set out in the TA Luft standards.

With regard to other emissions it is noted that McTigues Quarry does not incorporate an asphalt plant and as such no cumulative impacts will arise with regard to air emissions from the asphalt plant.

Air emissions from transportation vehicles in terms of CO₂, NO_x, SO₂ or CO are very likely to be negligible. The site is located in Air Quality zone D where ambient air pollution levels are very low (based on nearest real time monitoring stations at Claremorris) and threshold levels for SO₂, NO₂ and PM₁₀ have not been breached in accordance with the limits set out in Schedule 11 of SI 180 of 2011. Emissions associated with the transportation vehicles are not likely to have any material impact on ambient air quality conditions in the surrounding area. Emission levels associated with the stack are dealt with in more detail below.

8.4 The Height of the Stack

The grounds of appeal suggest that the air dispersion rates could be restricted due to insufficient stack height as the stack is located on the quarry floor which is below surrounding topographic ground levels. It is suggested that the variation in ground levels will reduce the effective stack height. As part of the documentation submitted to Galway County Council a comprehensive and reputable air dispersion model package (US EPA model AERMOD Prime – 7.9). It is clear from the modelling undertaken that the site layout and topography were taken into consideration in the modelling. The model executions were completed to assess the incremental additions to ground level concentrations (for PM₁₀ NO₂ and SO₂) over specified averaging intervals to allow comparison of the predictions with relevant air quality standards. The results are set out in Tables 6A to 6D of the Modelling Report submitted (for PM₁₀ PM_{2.5} SO₂ and NO₂). It is clear from these Tables that the predicted incremental contributions are very modest. Predicted ground level concentrations in each of the specified pollutants are in every instance less

than 50% of the hourly limits, daily limits and annual limits permitted in Schedule 11 of the Irish Air Quality Standards (SI no. 180). The predicted limits in the modelling exercise undertaken are set out in the Table below.

Table 1

Air Quality Limit	CAFÉ Directive and Irish AQS SI 180 of 2011	Predicted GLC (inc. background levels)
PM ₁₀	24hr Limit - 50µg/m ³	10µg/m ³
	Annual Limit – 40µg/m ³	9.2µg/m ³
PM _{2.5}	Annual Limit - 25µg/m ³	9.2µg/m ³
SO ₂	Hourly Limit – 350 µg/m ³	13µg/m ³
	Daily Limit – 125 µg/m ³	8µg/m ³
	Annual Limit – 20	4µg/m ³
NO ₂	Hourly Limit - 200µg/m ³	41µg/m ³
	Annual Limit (Human Health) – 40µg/m ³	12µg/m ³
	Annual Limit (vegetation) - 40µg/m ³	12µg/m ³

I can only conclude therefore from the detailed modelling undertaken that the stack height is sufficient to ensure that the predicted ground level concentrations of pollutants in the vicinity of the site will in no way breach the parameters and standards set out in SI no. 180. As such the predicted residual air pollution concentrations are deemed to be acceptable.

8.5 Type of Fuel to be utilised at the Asphalt Plant

Concerns are expressed that many asphalt plant use heavier oils than that specified in the licence. Appendix A2 of the licence issued by Galway County Council is clear and unambiguous. The fuel type specification list is:

- Light Fuel Oil < 1% w/w sulphur,
- Gas Oil < 0.2% w/w sulphur or

- Natural Gas.

The applicant is required to comply with the specifications set out in the licence. To not do so is an offence and can be the subject of enforcement proceedings and penalties as per S.11 and S12 of the Act (as amended). Any person found guilty of an offence under the Act can be the subject of the Criminal Procedure Act 1967³. There is no evidence to suggest that the applicant has a history of non-compliance as suggested in the grounds of appeal. I recommend that if the EPA is minded to grant a licence in this instance that a similar stipulation is incorporated into the condition in respect of Light Fuel Oil.

8.6 Beneficial Operator

It is suggested that the operator may not have the sufficient expertise to operate the asphalt plant. There is no reason to suggest that the applicant in this instance does not have the requisite knowledge or expertise to operate the asphalt plant. Where such a plant becomes operational it is incumbent on the operator to operate the plant in accordance with environmental and health and safety requirements. The response to the grounds of appeal states that once the asphalt plant has been commissioned, appropriate training together with detailed technical standard operating procedures will be put in place to ensure the successful operation of the asphalt plant. It would be inappropriate in my opinion that the licence would be refused on the grounds that there may not be the knowledge or expertise to operate the asphalt plant in question.

8.7 The Annual Financial Contribution

Galway County Council will undertake the monitoring of the licence conditions. They have concluded that an annual contribution of €400 is sufficient and appropriate to undertake the monitoring as set out in condition no. 6 of the licence. Galway County Council are best placed to determine the appropriate level of contribution on an annual basis and it will be undertaking the monitoring. Notwithstanding this fact condition 6.2 stipulates that the amount shall be adjusted annually in accordance with the Consumer Price Index and perhaps more importantly, under condition 6.3 the County Council reserves to right to alter the rate of contribution to more accurately reflect the actual cost of monitoring on a year by year basis. There are sufficient mechanisms incorporated into the condition therefore to ensure that the Authority can carry out appropriate and sufficient monitoring in respect of the licence conditions.

³ S. 12 (2) of the Air Pollution Act 1987 (as amended).

8.8 Monitoring

Concerns are expressed that monitoring requirements set out in the licence appear to be wholly and inadequate. Condition no. 2 of the licence sets out detailed monitoring requirements under seven separate subheadings. Monitoring stipulations are also set out in Appendix A3 which require monitoring on a quarterly basis for dust (articulate matter) combustion efficiency, sulphur dioxide, nitrogen dioxide. The analysis method is also set out for each of the parameters. Also condition no. 4 of the licence requires the Environment Section of Galway County Council be notified in the case of any malfunction or non-compliance issues. Any non-compliance issues are also required to be recorded. Again I would also highlight the stipulations set out under S.11 and S.12 of the Act in respect of offences and penalties for non-compliance with conditions associated with an emissions licence. As already stated above, the applicant is required to pay an annual contribution towards the cost of monitoring requirements. Therefore notwithstanding the concerns outlined the grounds of appeal, I am satisfied the monitoring conditions contained in the licence issued by Galway County Council are both adequate and appropriate.

Appropriate Assessment

The Agency as the competent authority in respect of the licence application before it, is required to carry out an appropriate assessment screening in accordance with the provisions of the European Communities (Birds and Natural Habitat) Regulations 2011 (SI 477 of 2011) as amended. I note that a screening exercise in relation to appropriate assessment was carried out in the context of the asphalt batching plant (details are not contained on file but reference is made to it in the planning report prepared by Galway Co Council). The nearest designated Natura 2000 site is the River Clare – Part of the River Corrib SAC Complex (Site Code 00297). At its closest point the River Clare passes approximately 4.2 km to the east of the subject site. There are a large number of qualifying interests associated with this designated site. In the main the qualifying interests relate to contiguous riverine and riparian habitats and aquatic species associated with the river. Having regard to the separation distance between the asphalt plant and the River, together with the modelling undertaken with regard to air dispersion and the nature of the qualifying interests associated with the designated SAC. I do not consider that the emissions from the asphalt plants will be in any way likely to have an impact on the SAC in question.

With regard to SPA's, the Lough Corrib SPA (Site Code 004042) is the closest designated site c.12 km to the south west. Again having regard to the dispersion modelling undertaken and the separation distances involved, I do not consider that the proposed asphalt plant or associated emissions will have any adverse impact on the SPA.

Having regard to the nature and scale of the proposed development and the nature of the receiving environment and proximity to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site'.

9.0 CONCLUSIONS AND RECOMMENDATIONS

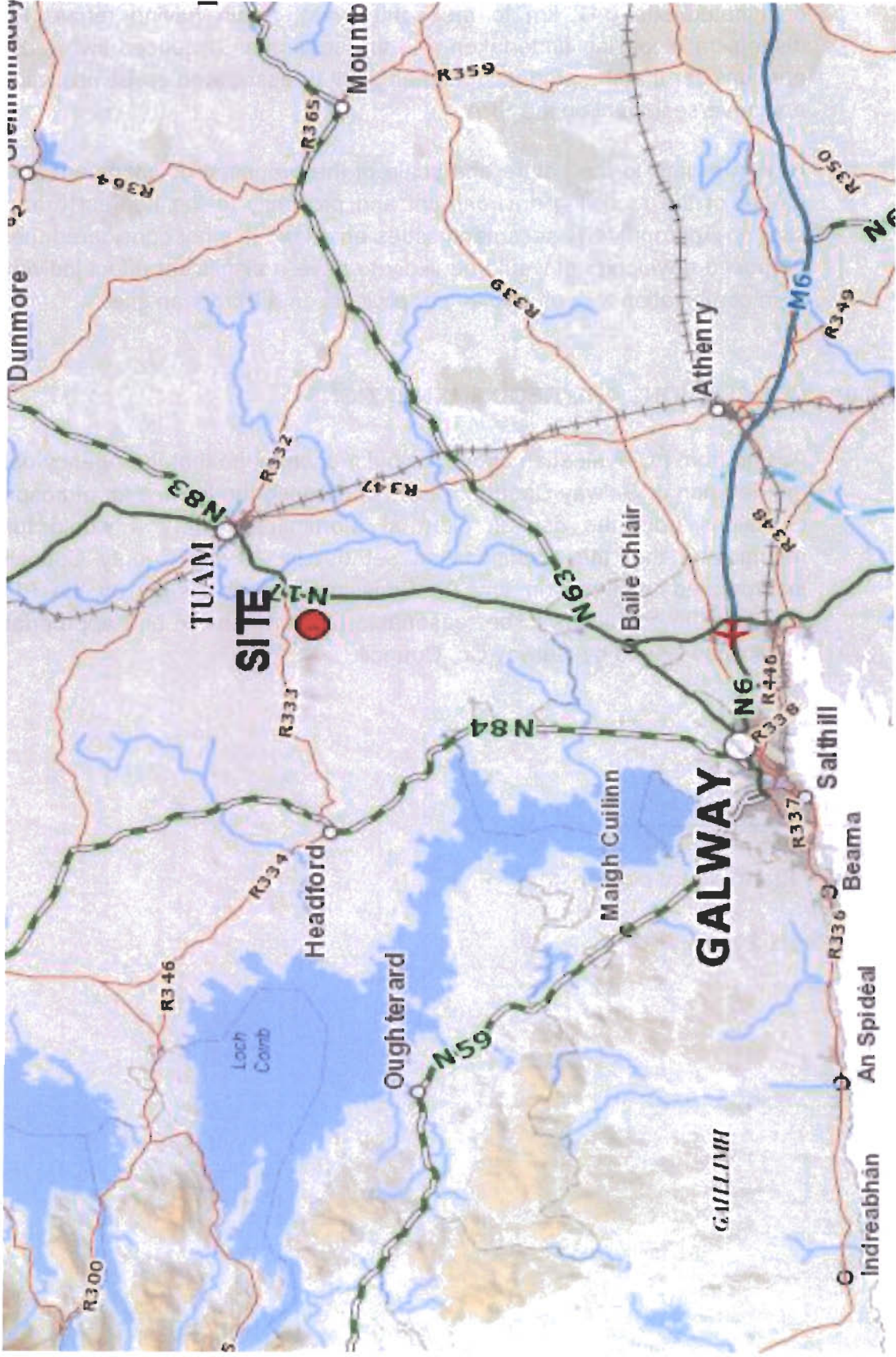
Arising from my evaluation above, I would recommend that the Agency uphold the decision of Galway County Council in granting the licence for atmospheric emissions from the asphalt plant at Mortimer's Quarry. I would further recommend that the conditions as set out in Galway County Council be incorporated unaltered in any Air Emission Licence issued by the EPA. I consider the conditions to be reasonable, comprehensive and appropriate in the licence issued by Galway Co. Council.

Paul Caprani,
Senior Planning Inspector.

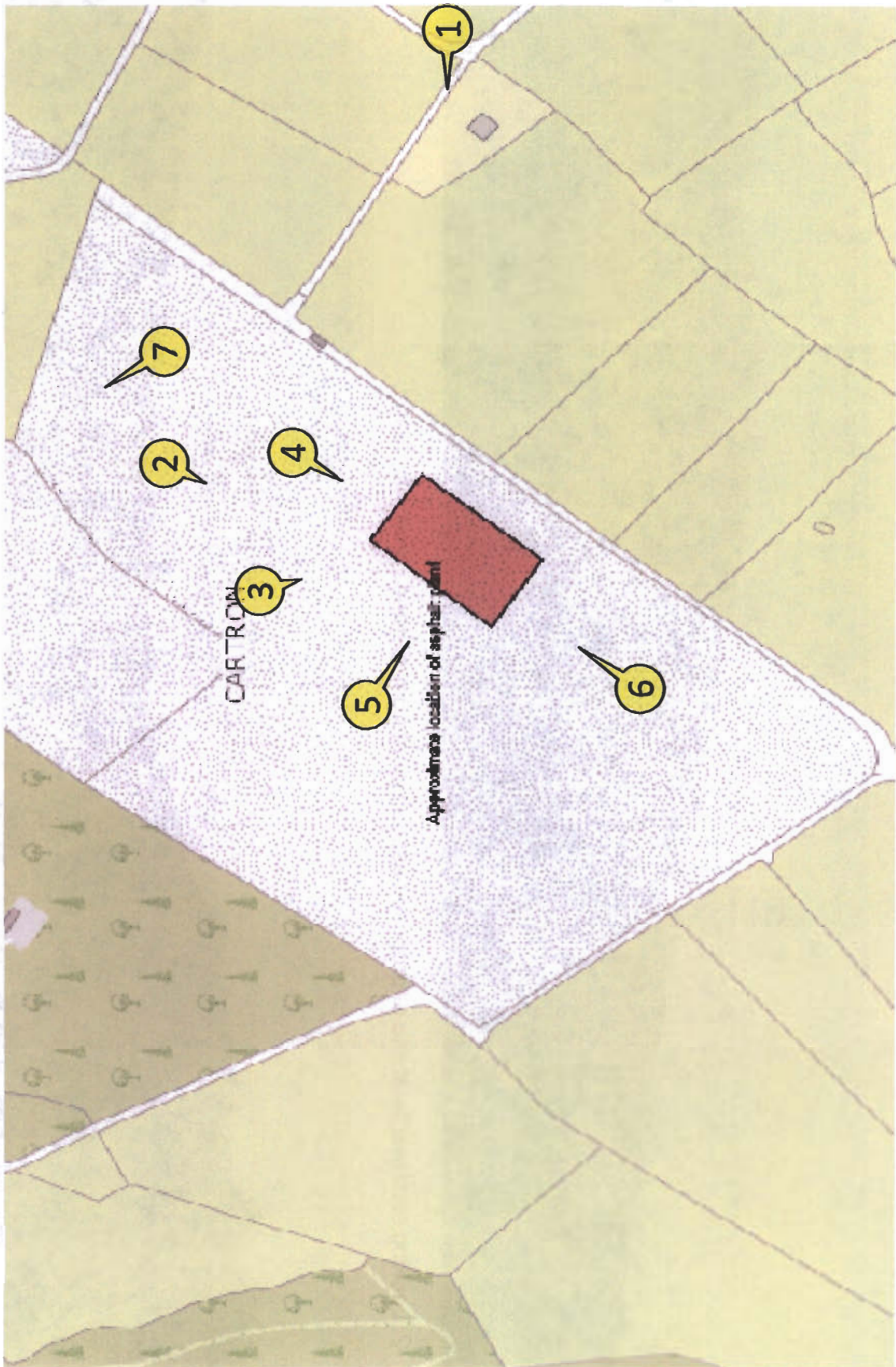
1st March, 2016.

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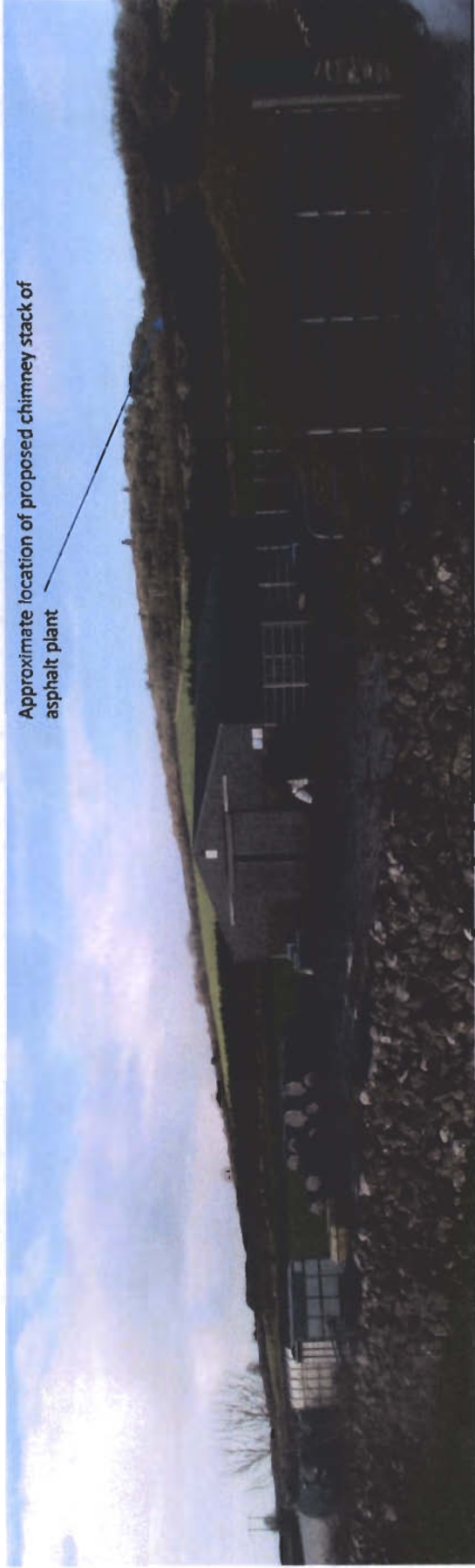
Site Location Map.



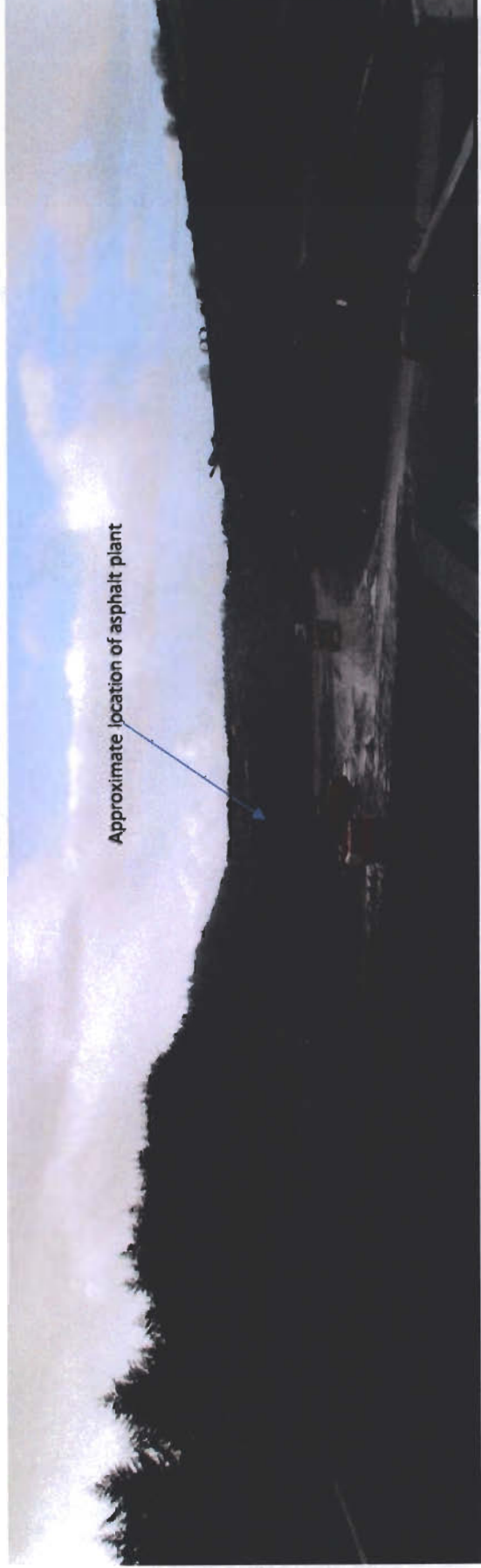
Photographic Index



1. Looking Westwards from outside the confines of site



2. Looking southwards at site of proposed asphalt plant from entrance area into quarry



3. View of area of proposed asphalt plant from quarry floor.



4. Looking southwards across area for proposed asphalt plant



5. Looking eastwards across area for proposed asphalt plant



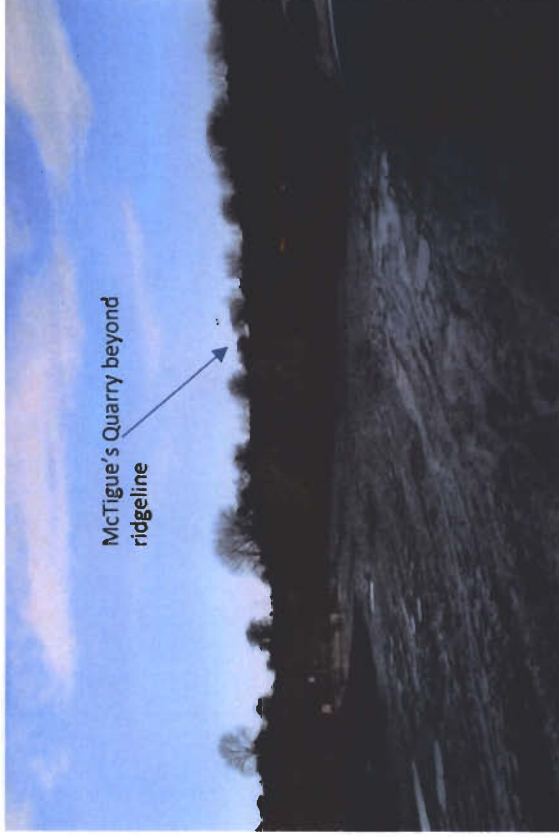
AP Licence for Mortimer's Quarry

6. Looking across area for proposed asphalt plant



AP Licence for Mortimer's Quarry

7. View of Mc Tigue's Quarry to the Northwest from Mortimer's Quarry



8. View of plant area at Mc Tigue's quarry – no evidence of any asphalt plant on site



9. View of extraction area in Mc Tigue's Quarry – no evidence of any asphalt plant in site



10. 9. View of extraction area in Mc Tigue's Quarry – no evidence of any asphalt plant in site



