

The Tonroe/Castletaylor (Ardrahan, Co. Galway) Action Group against Air Pollution

Ms Dorota Richards,
Programme Officer,
Office of Environmental Sustainability,
Environmental Protection Agency,
PO Box 3000,
Johnstown Castle Estate
County Wexford



4th September 2021

Reg. No. E0007-01
PA Reg. Ref: AP13/20

**Re: Appeal – Licence for the operation of an asphalt plant to John Madden and Sons Limited
at Tonroe, Ardrahan, County Galway**

Dear Ms Richards,

I acknowledge yours of 18th ult. and enclosures, in above matter.

I am acting on behalf of our Action Group and I am directed to submit the following submissions/observations-

We wish to refer to the submissions and observations of Michael and Rosario Brennan, in particular, we refer to items 6, 7, 8 and 9 therein. The accuracy of the initial planning application form, which document was submitted by John Madden and Sons Limited in September 2017, should normally be of vital interest to potential objectors. On the application form, itself, item 16 set out the question "*Does the application relate to a development which comprises or is for the purpose of an activity requiring an integrated pollution prevention and control licence*" The applicant's response to this question was a firm [No ✓]. Planning permission obtained on foot of such gravely misleading information should not be treated as being valid and should now be referred back to the issuing authority for investigation before any deliberations on the current application take place.

Residents in the immediate vicinity of the proposed development, by their mere presence in their respective planning approved buildings, have each an established right to unpolluted atmosphere, a general health promoting environment and a right to respect for their lives and physical integrity under the provisions of Article 8 of the Council of Europe, European Convention for the protection of Human Rights and Fundamental Freedoms, as amended. The relevant planning

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authority, as an agent of the State, has an obligation to discharge a duty of care towards these and all residents of the proposed development, and otherwise, in accordance with the specific terms of the said Article and the laws of the land.

There is a multitude of private residences situated within a radius of 3 km of the application site. Some private dwellings are located at distances of .22km, .54km, .76km and a number of homes are located at or within 1.5km of the proposed Asphalt Plant site. Also, within 1.62 km of the site and to the west thereof, there is a moderately large mixed national school located. There is also a mixed pre-school situated within 2.4km to the south of the proposal. Any discharge of unauthorised exhaust emissions from such a Plant, could have a serious and devastating effect on many lives, particularly, the lives of the young and vulnerable. 'The polluter pays' argument is of no benefit to sick patients. There is no evidence shown of any individual or company guarantee, should something go wrong. It may well be that those who authorise or influence active production of proposed materials on this site would be regarded by the higher courts as fit subjects when awarding costs. I am attaching three of Galway County Council's Planning Viewer maps to illustrate the proximity of dwellings.

The European Court of Human Rights, in Strasbourg, on 10th November, 2004 gave a judgement in the case of *Taskin and Others V. Turkey – Application number 46117/99*. The Court held that there had been a violation of Article 8 of European Convention on Human Rights, finding that Turkey had failed to discharge its obligation to guarantee the residents in the neighbourhood of a goldmine in Ovacik and surrounding villages, their right to respect for their private and family life, following the granting of permits to operate the said goldmine. The permits were eventually annulled and the residents were awarded compensation. Other similar cases are that of *Fadeyeva v. Russia 9th June, 2005* and *Guerra and Others v. Italy of 19th February 1998*.

The Court of Appeal in London, on 13th September, 2019 upheld the High Court's decision in 2017, to refuse planning permission on the grounds that a proposed housing development could impact air quality, due to concerns over air pollution and public health.

[Gladman Developments Ltd., -v- Secretary of State for Communities & Local Government & Others [2017] EWHC 2768 (Admin) on 6 November 2017; [2019] EWCA Civ. 1543 12 September 2019.

To be awarded a licence, the applicants must demonstrate to the issuing authority that they meet both the technical and financial competence criteria to successfully operate the plant in accordance with all the governing Regulations.

The final paragraph (p5) of John Dillon's response (on behalf of Tobin Consulting Engineers and the applicants) dated 17th December, 2020, envisages the employment of 'a reputable local contractor to allow competitive tendering with locally and sustainable sourced materials for local construction and road projects'

An Bórd Pleanála Inspector Paul Caprani is of opinion that "it would be inappropriate 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". Both Galway County Council and An Bórd Pleanála have

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very specific statutory obligations in such matters. These obligations should be given a more conscientious interpretation by the Inspector. In the event of a licence being granted, then, again, these obligations must anticipate professional, transparent and accountable operators' values for the purpose of ensuring that professional and scientific expertise is applied at all times during the operation of the plant.

In their adjudication of such or similar issues, the higher courts take into consideration every level of responsibility in their adjudication and in the awarding of costs.

The granting of a licence may have conditions attached thereto, limiting the operation of the licence to a set period or periods during which unannounced inspections take place on a regular basis. Any evidence of failure or the lowering of standards below acceptable limits, may result in such breaches activating an automatic termination of the licence. Galway County Council adjudge that an annual contribution of €400 is sufficient and appropriate for monitoring purposes. When suitably qualified officials are sent unannounced for the purpose of monitoring such activities on four occasions annually, this work should incur a reasonable annual cost of €6,000. The qualifications of the personnel, the nature of the terrain and work involved, including the journey and time spent preparing and submitting reports, should all be taken into consideration when costing the need for proper and professional oversight.

Again, the Inspector, on making reference to the height of the chimney Stack, suggests that the *"predicted ground level concentrations in each of the specified pollutants are, in every instance, less than 50% of the hourly limits and annual limits permitted"*. There is no guarantee that predicted limits can reach any reasonable level of accuracy when being compared with smoke and smell emissions from a functioning plant. In theory, the current method of measuring predictions and using these to justify statutory obligations is like a Revenue official asking a shopkeeper for his final readings, when the shopkeeper is operating two tills.

The only way to establish if a chimney stack is of sufficient height, is to measure the dispersion of active plant emissions following on from the grant of an operation licence. At the initial stage, a licence should only be granted for a limited period during which time regular unannounced tests and independent monitoring of results take place. Then, any breach detected would merit a termination of the temporary licence. Self-monitoring of an operating asphalt plant by the licensed holder or his agent should never be relied upon, when verification is not fool-proof.

It is represented by the applicant's consulting engineers that asphalt/bituminous macadam production plans are to generate some 100,000 tonnes of macadam per year, as demand may require. It is stated that such production would require 80,000 tonnes/year of imported stone combined with 20,000 tonnes per annum of imported material, comprising sand, hard chip and bitumen for the said production. The only conclusion one could draw from this statement is that no on-site material is available for the planned production.

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On behalf of my Group, I thank you for affording us this opportunity to express our views and opinions. I also wish to thank you and your fellow officers for giving our concerns your valued consideration.

Yours sincerely,

**Noreen O'Connor
Secretary**

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