

# Noonan Linehan Carroll Coffey

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**BY EMAIL & POST**

Ms. Noeleen Keavey,  
Programme Officer,  
Office of Licensing & Guidance,  
Environmental Protection Agency,  
PO Box 3000,  
Johnstown Castle Estate,  
Co. Wexford.

11<sup>th</sup> April 2007

Our Ref: 29606-06/JN/PW

**Re: Waste Licence Application at Ballard, Araglin, Kilworth, Co. Cork.  
W0230-01**

**Applicant: Valeco Limited**

**Our Clients: Valley Residents Association c/o Nora Shanahan, Lyre, Araglin, Co. Cork**

Dear Ms. Keavey,

I refer to my letter dated March 23<sup>rd</sup> 2007 receipt of which you have kindly acknowledged.

Now that the Agency will have had an opportunity to examine the Bord Pleanala decision (particularly its reasons, which will be discussed below) and relevant supporting material including the Report of the Board's Senior Inspector Mr Moore, I wish to draw the Agency's attention to certain provisions of the licensing legislation which come into sharp focus in view of the Board's decision to refuse planning permission. These provisions prohibit the Agency from granting the licence to the applicant. The Agency has no legal option but to refuse.

**Prohibition on licencing in certain cases**

I refer to s 40(4) of the Waste Management Act 1996 as amended by s 35 of the Protection of the Environment Act 2003. The Section provides that the EPA cannot grant a waste licence unless it is satisfied on a number of issues. One of these is that the Agency must be satisfied that the activity concerned will not cause environmental pollution. Environmental pollution is defined in s 5 of the Waste Management Act as holding, transporting, recovering, or disposing of waste in a manner which would to a significant extent endanger human health or the environment and in particular create a risk to water, the atmosphere, land, soil, plants, or animals; create a nuisance through noise odour or litter; or adversely affect the countryside or places of special interest.

### **Reasons for ABP Refusal - final and binding on EPA**

Bord Pleanála's reason for refusal number 2 sets out the Board's findings that the development would lead to the endangerment of public safety by reason of traffic hazard and obstruction of road users. Having regard to the division of responsibilities between the Board and the Agency, where the Agency defers to the Board on traffic issues, these are findings which the Agency has to accept. These findings in turn bring the traffic consequences of the development fairly and squarely within the statutory definition of environmental pollution. These are findings which cannot be resolved by any conditions the EPA might attach as the issue of roads and traffic management is outside its remit. Therefore, the application falls foul of Section 40(4)(b) and it is one which the Agency is obliged to refuse.

The Board's refusal reason number 3 is an unambiguous finding by the Board that the development will have a significant adverse impact on the landscape character of the area, generating significant visual intrusion and seriously injuring the visual amenities of the area. This is also plainly environmental pollution as defined in s 5(c) of the Waste Management Act. All of these impacts are impacts which in the words of the statute "adversely affect the countryside". As with the traffic issue, this refusal condition recites formal findings reached by the Board which the Agency must regard as final and binding on it. Similarly they are not capable of being resolved by licence conditions. For this reason also the application falls foul of Section 40(4)(b) and it is one which the Agency is therefore obliged to refuse.

Additionally, s 40(4)(cc) prohibits the EPA from granting a licence unless it is satisfied that the activity is consistent with the objectives of the relevant Waste Management Plan and will not prejudice measures to be taken or to be taken by the relevant Local Authority or Authorities to implement any such plan. Refusal reason number 1 indicates that this application wholly fails this test also. Again there are no licence conditions which the EPA could impose that would overcome that finding. For this reason also the application falls foul of Section 40(4)(b) and it is one which the Agency is therefore obliged to refuse.

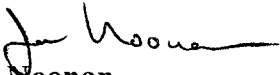
In refusal reason number 4 the Board gives its verdict on the EIS submitted with the application. This reason recites findings made by the Board which the Agency must regard as binding on it. Accordingly the application has been found by the Board not to comply with the mandatory provisions of the EIA Directive. Under the Directive no development consent can be granted in those circumstances. Thus as a matter of law it is not open to the Agency to licence the proposed activities.

### **Conclusion**

We note that the application was filed in June 2006. We also note from the Agency website today that the applicant does not seem to have responded within the timeframe given by the Agency to the requests sent to it by the Agency on February 6th last. In this letter I have set out for the Agency the specific statutory reasons why it would be *ultra vires* the Agency to grant the Waste Licence sought by the applicant in this case. In order to bring this matter to a

fair and timely conclusion may I ask the Agency to address this matter at the earliest opportunity as it appears to me to be fatal to the application.

Yours sincerely,



**Joe Noonan,**  
**NOONAN LINEHAN CARROLL COFFEY**

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**From:** Pippa [mailto:pippa@NLCC.ie] **On Behalf Of** Joe Noonan  
**Sent:** 11 April 2007 16:18  
**To:** Infomail  
**Subject:** Waste Licence Application at Ballard, Araglin, Kilworth, Co. Cork. W0230-01

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