



An
Bord
Pleanála

Inspector's Report 07.CH3302

Local Authority Project	Irish Water Compulsory Purchase (Ballinasloe Sewerage Scheme) Order 2016
Location	Ballinasloe, Co. Galway.
Applicant	Irish Water
Local Authority	Galway County Council
Objectors	1. The Directors of Shearwater Plaza Management 2. Myrtlevalle Ltd.
Observers	None.
Date of Site Inspection	8 th March 2017
Inspector	Deirdre MacGabhann

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1.0 Introduction

1.1. This report refers to the objections received to a Compulsory Purchase Order made by Irish Water in respect of the Ballinasloe Sewerage Scheme. The purpose of the CPO is to facilitate the construction of elements of the Ballinasloe Sewerage Scheme with proposed works in respect of the wastewater sewer network and the water distribution system. The overall CPO refers to 24 individual plots of land and seeks to acquire either a permanent wayleave over the land or the temporary use of lands as a working area. Objections have been made in respect of three individual plots of land, nos. 108, 109 and 110.

2.0 Statutory Basis

- 2.1. The application is made under Section 76 and the Third Schedule to the Housing Act, 1966, as extended by Section 10 of the Local Government Act (No 2) Act, 1960 (as substituted by section 86 of the Housing Act 1966 and as amended by Section 6 and the Second Schedule to the Road Act 1993) and the Planning and Development Acts 2000 to 2015 and as applied by Section 93 of the Water Services Act, 2007, as amended.
- 2.2. Irish Water, pursuant to Section 7 of the Water Services (No. 2) Act, 2013 is carrying out the functions of a Water Services Authority for the purposes of the Water Services Act, 2007.

3.0 Site Location and Description

- 3.1. The CPO refers to 24 plots of land in 5 different townlands within Ballinasloe. These are illustrated on Drawing No. IW/10001639/CPO/001 (Deposit Map). They comprise the following:
- Plot nos. 101 to 104 - Lie to the north east of a small residential estate and comprise disused/overgrown land to the rear of palisade fencing.
 - Plot nos. 105 to 106, 107, 123 and 124 – Are situated within a residential area.

- Plot nos. 107, 123 and 124 comprise a small part of an area of amenity open space and associated footpaths.
- Plot nos. 105 and 106 comprise the rear garden/lands of adjoining property.
- Plot nos. 111 to 113 – Comprise part of a car park serving retail units along the N6 to the north of Shearwater Hotel.
- Plot nos. 108 to 109 – Lie to the south east of the N6 and north east of the Canal Road. They comprise the perimeter lands belonging to Shearwater Hotel.
 - Plot no. 108 lies to the north of the access road to the underground car park (situated to the rear of the hotel) and comprises part of a larger land holding which appears to be disused/overgrown. Vehicles cannot exit onto Canal Road as the service road is one way from Canal Road for a short distance (photographs 1 and 10)
 - Plot no. 109 extends over the access road to the car park and includes the pedestrian access to the raised walkway alongside the hotel and retail units (currently unoccupied) in the north western elevation of the hotel (photographs 1 to 3).
 - Plot 110 includes the area to the north west of the hotel building façade alongside the N6 to the public footpath, the area to the south west of the building's façade alongside Canal Road to the public road/footpath and part of the service road providing access to the rear of the hotel. It includes hard and soft landscaping associated with the hotel, vertical and horizontal ventilation vents to the underground car park, the main entrance area to the hotel (including drop off/collection point) and an external seating area associated with the bar/restaurant (photographs 4 to 10).
- Plot no. 121 – Lies to the east of the R357 and comprises agricultural land.
- Plot nos. 118 and 119 – Lie to the west of the R357 and to the south of two residential properties. The plots comprise the access lane to these properties and to a further residential property to the west.

- Plot nos. 116 and 117 – Lie to the west of plot nos. 118 and 119 and comprise part of the rear garden of a residential property (currently unoccupied).
- Plot nos. 114 and 115 – Also lie to the west of the R357 and immediately north of plot nos. 116 and 117. They are situated to the rear of four residential units and comprise part of an agricultural field.
- Plot no. 122 – Lies to the south of the Ballinasloe to Roscommon road and comprises the external yard area of a commercial development.

4.0 Purpose of the CPO

4.1. The development underlying the CPO is described in Irish Water's documents to the Board, which include:

- Managing Director's Report and Order authorising the making of the CPO (28th October 2016).
- The CPO and CPO map, drawing no. IW/10001639/CPO/001 (28th October 2016).
- Engineers Report (28th October 2016).
- Public notice (4th November 2016).
- Copy of CPO notice as issued to affected landowners (28th October 2016).

4.2. Ballinasloe Sewerage Scheme involves works on both the sewer network and the water distribution network within the environs of Ballinasloe Town. In 2016 Contract 1 of the Ballinasloe Sewerage Scheme were completed. The works facilitated by the proposed CPO come forward under Contract 2 of the Scheme.

The Existing Sewerage Scheme

4.3. The existing sewer network in Ballinasloe comprises mainly a combined system. Wastewater is treated at two facilities with the majority of wastewater discharging to Ballinasloe Wastewater Treatment Plant (WWTP), at Pollboy, and a small section of the collection network, in the Roscommon Road area, discharging to Imhoff Tank (see attachments for location). In addition to the two primary discharges from the agglomeration, there are a further four locations in the network where discharges through combined sewer overflows (CSO's) can occur i.e. the locations are designed

to discharge untreated flows from the sewer network during periods of heavy rainfall with the potential for environmental damage, visual and odour nuisance.

- 4.4. The urban waste water system is currently non-compliant with the Discharge Licence issued by the EPA for Ballinasloe Town and Environs agglomeration (No. D0032-01) which requires that the secondary discharge (SW002) from the Imhoff Tank to be discontinued on or before 31st December 2015.
- 4.5. With regard to the water supply system, the existing network in the town comprises mainly of asbestos cement, cast iron and PVC watermains. An assessment undertaken on the condition and performance of the pipe network identified and prioritised sections of the network for rehabilitation.

Objectives of the Ballinasloe Sewerage Scheme

- 4.6. The objectives of the Ballinasloe Sewerage Scheme project are:
 - To decommission the Imhoff tank with the installation of sewers in the Roscommon Road area to divert flows that are currently discharging to the Imhoff tank onto the network that discharges ultimately to the WWTP at Pollboy.
 - To undertake surface water separation on some of the streets in the town through the installation of surface water sewers to reduce the volume of water entering the combined system and the wastewater treatment plant.
 - To increase the hydraulic carrying capacity of the sewers being upgraded and, therefore, reducing the potential for flooding from the sewer network and providing infrastructure that will ensure the medium term needs of the town (sewer capacity) can be met.
 - Removal of one of the CSOs on the sewer network that currently discharges combined flows to a water body in the vicinity of the town in periods of heavy rainfall.
 - Replacement of sections of pipework on the water distribution network that have been identified as priority sections of watermain for rehabilitation due to their condition and performance. Benefits of replacing these sections of watermain will be to reduce leakage on the water network, reduce

interruptions to supply associated with burst and leak repairs and improving water quality.

- 4.7. In total, the scheme consists of provision of approximately 2.5km of sewers (combined and surface water) ranging in diameter from 150mm to 600mm and approximately 2.5km of watermains ranging in diameter from 63mm to 400mm. The proposed works will be undertaken at the same time as proposed street enhancement works in the town being undertaken by Galway County Council.

Requirement for CPO

- 4.8. The reason for the CPO is to facilitate construction of elements of the scheme, namely gravity sewers and water mains. Irish Water state that during the detailed design process numerous pipe routes were examined with the current proposed network being the most feasible. Whilst most of the works under Contract 2 can be installed in public roads or footpaths, some of the routes involve installation of pipework on private lands, hence the requirement for permanent wayleaves, to accommodate pipelines, and temporary working areas, to facilitate construction.
- 4.9. Agreement has been reached with the majority of landowners and lands are included in the CPO to ensure that all wayleaves will be processed in accordance with the project programme. Compulsory purchase is proposed for the remaining plots for the following reasons:
- Plot nos. 116, 117 and 118 - Works on this wayleave involve laying a new sewer to connect the property to the sewer network which ultimately discharges to the WWTP at Pollboy to facilitate the decommissioning of the Imhoff Tank. The owners of the properties are deceased and the properties are subject to probate.
 - Plot nos. 123 and 124 – The works to be undertaken on this wayleave involve upgrading of a surface water pipe, to address a hydraulic restriction on the system (existing pipe is under capacity). The lands are the property of Galway County Council, but the Council have not been able to confirm the basis of its title.
 - Plot nos. 108 to 110 – The works to be undertaken on this wayleave involve upgrading of an existing sewer which runs from the entrance to the Civic

Offices in Ballinasloe to manhole C9, located in plot no. 109, to address structural defects and capacity restrictions in the existing sewer. No works are proposed to the existing sewer which extends along the perimeter of the hotel, through plot nos. 109 and 110. However, the wayleave will facilitate access by Irish Water in the event of the sewer failing e.g. collapsing/burst. After significant correspondence, meetings etc. Irish Water have been unable to reach agreement with the owners.

- 4.10. As stated the Board should note that the objections lodged relate only to plot nos. 108, 109 and 110.

5.0 Policy Context

Development Plan

- 5.1. Galway County Development Plan 2015-2021 sets out policies and objectives in respect of water and wastewater. Policies in respect of water supply support the implementation of Irish Water's Capital Investment Plan (Policy WS 3, Objective WS 10) and support efficiency in the operation of water supply infrastructure (Objective WS 8).
- 5.2. With regard to wastewater Policy WW1 (collaborative provision of wastewater collection and treatment systems) states that the planning authority will co-operate with Irish Water in the delivery of their Capital Investment Plan to increase capacity to service settlements and investigate future upgrades of treatment plants.
- 5.3. Policy objective WW2 (provision of wastewater collection and treatment systems) supports, in conjunction with Irish Water, the provision, extension and upgrade of waste water collection and treatment systems in towns and villages of the County. Table 6.6 refers to the Ballinasloe Sewerage Scheme in the indicative infrastructure capacity for core strategy settlements.
- 5.4. Policy objective WW6 (adherence to environmental standards) promotes the provision of safe and secure waste water infrastructure to ensure that the public is protected.
- 5.5. Policies of the Ballinasloe Local Area Plan 2015 to 2021 support Irish Water in the provision and maintenance of adequate water supply and wastewater management

infrastructure, accordance with EU Directives, to service the town of Ballinasloe (Policy UI 1, Objective UI 1). Policy UI2 supports Irish Water in the implementation of their Capital Investment Plan and their Water Services Strategic Plan.

Natural Heritage Designations

- 5.6. The WWTP in Ballinasloe, at Pollboy, discharges into the River Suck. This river is designated as an SPA and pNHA, the River Suck Callows SPA (0004097) and River Suck Callows pNHA (000222). The River Suck discharges into the River Shannon, c. 13km downstream of Ballinasloe and the river is designated as an SPA, SAC and pNHA, the Middle Shannon Callows SPA (site code 004096) and River Shannon Callows SAC/pNHA (site code 000216) respectively.

6.0 Objections

- 6.1. Two objections have been lodged in respect of the CPO. They are made by the Directors Shearwater Plaza Management Limited and Myrtlevale Ltd, both in respect of plot nos. 108 to 110. Objections are made on the following grounds:

- The land over which the wayleave extends form an essential part of the Shearwater Hotel and lands designated for future development. There is no need to acquire the areas of land as there is a public road adjoining the property and the sewers could be laid in these roads. The CPO should be annulled.
- There is an underground car park serving the hotel to cater for existing and proposed development. Ventilation ducts are fitted at street level to provide ventilation to the car park. The proposed wayleave traverses the ventilation ducts. There is no logic to providing a wayleave over the underground car park which could adversely impact on the operation and use of the car park.
- The landscaped amenity area, access, egress, drop off zones, parking, paved walkways etc. will also be adversely impacted upon by the wayleave.
- The wayleaves will adversely impact on the use and value of the Shearwater Hotel property. It will depreciate the value of the property and affect the future development of the lands and the property.

7.0 The Oral Hearing

7.1. An oral hearing into the objections lodged to the Compulsory Purchase Order was commenced at 10.30am on Wednesday 8th March 2017 in Gullane's Hotel, Ballinasloe. A recording of the hearing is available at the Board's offices. It comprises the formal record of the hearing. Parties in attendance at the hearing are listed in the attachments.

7.2. The following parties made oral submissions at the hearing:

- Irish Water:
 - Carol O'Farrell, BL.
 - Colm Boyd – Infrastructure Programme Leader (North and West Region), Irish Water.
 - Patrick Scally – Chartered Civil Engineer and Associate Director, Ryan Hanley consulting engineers. Project Manager, Ballinasloe Sewerage Scheme.
- Galway County Council:
 - Valerie Loughnane-Moran, Acting Senior Planner.
- Objectors (members of the Melville family):
 - Stephen Dowds, Planning Consultant.
 - Gerry Dolan, Engineer.

7.3. Documents submitted to the Board in the course of the hearing are attached to this report (submission nos. 1 to 6.5). Key points raised by the parties are summarised below:

Objectors

- The proposed wayleave, would wrap around the two principal sides of the hotel (facing the N6 and Canal Road) and part of the third side of the hotel. It would extend across and interfere with:
 - The ventilation ducts to the car park (see objector's submission no. 3.4 and 4.4 to the oral hearing) and access to the car park,

- An underground keg room (see objector's submission no. 3.4 to the oral hearing),
 - The forecourt to the hotel, main hotel access, drop off/collection point, landscaping and signage.
 - Access to the retail units (currently vacant) in the hotel building facing the N6 which open onto a raised walkway.
- The wayleave, extending from the hotel to the public road and at a width of up to 15.7m, is excessive. Most sewers are laid in the public road where this width would not be available.
 - The wayleave unnecessarily infringes on the structure of the hotel and areas required the functioning of the hotel.
 - Drawings submitted to the hearing (submission nos. 4.3 and 4.4) show the location of the existing wastewater sewer which runs around the perimeter of the hotel at an estimated depth of between 4.2m and 6.6m. The drawings had been completed by Gerry Dolan, Engineer for the objector, based on an on-site inspection of the sewer. The sewer was constructed at the time of the Shearwater Hotel development in 2008. It was built by the owners of the hotel (c.€450,000) and of a size to cater for the future development of the town.
 - N6 frontage - The existing sewer lies outside of the elevated walkway providing access to the retail units facing the N6. The elevated walkway is supported by a retaining wall on the roadside of the walkway. There is therefore no need for the proposed wayleave to extend across the walkway.
 - Canal Road frontage - There is the possibility of adding a smoking area along this frontage or another addition, associated with the bar/restaurant. The wayleave infringes upon this area and the underground keg room. The wayleave, being more than 15m wide in the vicinity of Canal Road, is excessive and unnecessary. The location of any trench could pose a risk to the hotel wall.
 - The wayleave should be annulled or at least reduced in width, for example, with Irish Water using part of the adjoining public road for a working area.

- The sewer remains in the ownership of the hotel. In the event of Irish Water obtaining a wayleave over the sewer, the owner of the hotel would remain the owner of the sewer and legally responsible for it (repairs and maintenance). Question whether Irish Water could carry out repairs to a sewer which they do not own.
- In Irish Water's correspondence with the objector in respect of the CPO, the area shown in Schedule 1 of Part 1 of the Order (Part 1 Permanent Wayleave), i.e. for plots 108, 109 and 110 refers only to the area of land associated with Plot 108, 0.0116ha, (submission no. 5 to the hearing).

7.4. In response to questions at the oral hearing, the objector stated that there were no current plans for the development of the area affected by the wayleave, but that the hotel may wish to bring forward such plans in the future e.g. in respect of the external amenity areas to the hotel. The objectors also stated that hotel has no rear garden and is reliant on the amenity areas to the front of the hotel e.g. for wedding photographs.

7.5. The objector also stated that a second phase of the hotel was originally proposed to the north east of the existing building (with permission granted under PL37.234742). Whilst he accepted that this development would not be affected by the proposed acquisition, access to any construction site may be affected if phase two of the hotel development was constructed simultaneously with the new sewer to connect to manhole C9.

Galway County Council

- The proposed development is supported by policy WW1 and objectives WW2 and WW6 of the County Development Plan 2015-2021 and is specifically identified in Table 6.6 which sets out indicative infrastructure for the core strategy of the Plan. It is also supported by policies UI1 and UI2 and objective UI1 of the Ballinasloe Local Area Plan 2015-2021.

7.6. In response to a question by the objector, the planning authority stated that any application for planning permission on lands on the perimeter of the hotel, would be assessed against a range of criteria e.g. zoning of the site, which included 'constrained land uses' along part of the hotel frontage due to location of lands in flood risk area, proximity to SPA etc., and advice from Irish Water.

Irish Water

- Acknowledge that sewer is in the ownership of the objector. The sewer carries a substantial proportion of the wastewater arising in Ballinasloe town and the wayleave was required in order to enable essential repair works to be carried out in the event of a failure, with the consent of the landowner.
- No works are proposed to the existing sewer (from points 1 to 4 of the objector's submission no. 3.4 and 4.4), except to tie in a new sewer from the Civic Offices in the town to manhole C9 (point no. 1 on the objector's submission).
- In the absence of a major fault occurring, maintenance of the sewer (e.g. jetting) was likely to be quite limited due to the reasonably high and continuous flows in the sewer. Blockages of the sewer were also unlikely given its estimated size (c.525mm at its upper end and c.750mm at its downstream end). The likelihood of a collapse or structural defect in the sewer occurring was difficult to predict as it was dependent on the workmanship employed in sewer construction.
- Canal Road frontage - The location of the sewer along this road can be identified from the location of manholes. Irish Water would accept that the location of the sewer as depicted on the objector's drawings (submission nos. 3.4 and 4.4 to the hearing) is correct. Irish Water had tried to engage with the owners of the hotel to establish the location of the sewer and any constraints in respect of the hotel. However, this was the first time they had been made aware of the location of the keg room.
- N6 frontage - The exact location of the sewer along the old N6 was less clear (not all manholes are visible). Irish Water had attempted to engage with the landowner regarding the location of the sewer. Whilst they acknowledged the objector's submission (no. 3.4 and 4.4) indicating the location of the sewer along the N6, the drawings presented were not 'as constructed drawings'. They therefore could not be certain of the exact location of the sewer and it was their understanding that along the old N6, the sewer had been built under the cantilevered walkway that extended out from the hotel.
- The depth of the sewer was unusual. Consequently, at a depth of between 4m to 6m and situated in poor ground, shuttering (e.g. sheet piling) would be required for any trench opened up for repair work to the sewer, to prevent a collapse of the

trench). The location of the sewer, as shown by the applicant, is in a central position in the wayleave. The width of the wayleave was required in order to provide access for machinery, on either side of any trench, to construct the necessary shuttering to enable access to the trench/pipe. Where the wayleave narrows, works would likely extend into the public road (where no wayleave is required).

- In the unlikely event of a failure of the existing sewer (if this was to occur), any repair works carried out would be short term and all hard and soft landscaping affected by the works would be reinstated.
- Any closure of the junction of the service road to the rear of the hotel (providing access to the underground car park) and N6 would be temporary. Access to the car park could be maintained by two way flows on the internal access road to the car park, subject to the agreement with Galway County Council.
- It would be highly unlikely that repair works to the sewer would necessitate closure of the basement car park.
- Objections to the proposed CPO were made on the 12th December 2016 by the directors of Shearwater Plaza Management Limited (Melville family). Since 6th April 2016, the company had been dissolved (submission nos. 6.1 to 6.4 to the hearing) and the assets of the company were now in the ownership of the State. Under folio 97962, the hotel property was leased to members of the Melville family for a period of 999 years. Irish Water accept that members of the Melville family are lessees of the hotel and have a right to make objections to the CPO.
- Objections to the CPO were made on the 14th December 2016 by Myrtlevalle Ltd. Myrtlevalle Ltd. has no proprietary interest in the Shearwater Hotel.

7.7. In response to questions from the objector, Irish Water confirmed that they had no knowledge of the location of a private water main serving the hotel, located in the roadside alongside the N6 frontage walkway. They could not comment, therefore, on the likely impact of the wayleave on this.

8.0 Assessment

8.1. The proposed compulsory purchase relates to the acquisition of wayleaves and the use of land for temporary working areas of land in private ownership. Consequently, the following matters are considered in this assessment:

- The community need to be met by the proposed land acquisition;
- Suitability of the lands to meet the community need;
- Whether the works to be carried out on the property accord with the Development Plan for the area under the Planning Acts;
- Any alternative methods of meeting the community need that has been considered.

Community Need

8.2. The community need for the project has been described by Irish Water in the application documentation. Key arguments include:

- a. The current lack of compliance with the EPA's Wastewater Discharge Licence for the Ballinasloe Town & Environs (D0032-01),
- b. The inadequate condition and performance of sections of pipework on the water distribution system, and
- c. To facilitate the repair and maintenance of the sewer system.

Lack of Compliance with the EPA's Wastewater Discharge Licence

8.3. A copy of Irish Water's Wastewater Discharge Licence for the Ballinasloe agglomeration was submitted by the applicant to the Board at the oral hearing (submission no. 6.5). The licence governs discharges arising from the WWTP at Pollboy (primary waste water discharge), the treatment plant at Imhoff (secondary waste water discharge) and six storm water overflows. It sets out discharge limit for various parameters and requires appropriate remedial action, within specified timeframes, to be undertaken in order to address each of the discharge locations within the agglomeration to ensure appropriate protection of receiving waters. Schedule C of the Licence requires that Irish Water discontinue discharge from the Imhoff tank (SW002). Condition No. 4 of the licence requires monitoring of storm

water overflows and condition no. 5, requires an assessment of all storm water overflows to determine the effectiveness of their operation and to identify improvements necessary to comply with the requirements of the licence.

- 8.4. The proposed acquisition is brought forward to facilitate compliance with the Wastewater Discharge Licence for Ballinasloe Town and Environs. Specifically, works are proposed to connect properties to sewers which ultimately discharge into the Ballinasloe WWTP, to facilitate the decommissioning of the Imhoff tank. Secondly, surface water separation is proposed to reduce the volume of water entering the combined system and the risk/frequency of sewer overflows occurring (e.g. discharge of raw sewage on sites within the town) and, together with proposed increases in the hydraulic capacity of sewers being upgraded will facilitate removal of one of the CSOs.

Inadequate Condition and Performance of Sections of Pipework on the Water Distribution System

- 8.5. From the information on file, it is my understanding that following an assessment of the water distribution system, it is proposed to replace certain sections of pipework. The benefits of the rehabilitation work will be reduced leakages, reduced interruptions in supply associated with bursts and leaks and improved water quality (removal of cast iron sections).

Access to Sewer for Maintenance

- 8.6. The applicant is seeking a wayleave over an existing sewer which is in private ownership (plot nos. 109 to 110). From the information on file and as discussed at the oral hearing, it is evident that this is a large sewer that carries a substantial proportion of the wastewater arising in Ballinasloe town. Access is sought under the proposed permanent wayleave in respect of plot nos. 109 and 110 in order to provide for the repair and maintenance of the sewer in the long term.
- 8.7. Irish Water has not sought to bring forward an application for the acquisition of this section of the sewer itself, and no explanation for this approach was referred to in either the application documents or the oral hearing. However, Irish Water did accept that any repair works would have to be carried out with the permission of the landowner. Whilst the situation is, therefore, a little unusual, the proposed wayleave would give Irish Water the right to repair or maintain the sewer in the event of its

failure, with the agreement of the landowner. Further, it would be in the interest of the landowner to also facilitate this as they would remain responsible for the sewer.

- 8.8. Having regard to the above, it is evident that the proposed compulsory purchase order is brought forward as part of the improvement of the arrangements for the discharge of wastewater from Ballinasloe Town and environs, in accordance with the requirements of the EPA wastewater discharge licence, to maintain the sewerage system and to improve the arrangements for, reliability of and quality of water supply. The section of land for which objections have been received is an integral part of this system. Accordingly, I consider that Irish Water have adequately demonstrated a community need for the wayleave acquisition.

Suitability of the Lands to meet the Community Need

- 8.9. The applicant for the compulsory purchase order has set out in Drawing No. IW/10001639/PPP/001 the extent of lands required for the proposed wayleaves and temporary working area. I have inspected each of these sites and consider that the lands in question are generally suitable for the proposed purpose and proportional to Irish Water's requirements. The proposed permanent wayleaves typically extend over a small area and the temporary working areas immediately adjoining the permanent wayleave. Lands identified comprise amenity open space, rear gardens of residential property, the yard of a commercial property and access roads to residential dwellings. The proposed wayleave would not therefore seriously interfere with any of the existing land uses.

Plot nos. 108, 109 and 110

- 8.10. These three plots relate to a proposed permanent wayleave in the vicinity of Shearwater Hotel.
- 8.11. From the information on file it would appear that prior to the construction of the Shearwater Hotel, two combined sewers traversed the site of the hotel. These two sewers conveyed the majority of the wastewater from the Ballinasloe agglomeration to a pumping station to the rear of the hotel (Dunlo Pumping Station) and from there to the Ballinasloe WWTP. At the time the hotel was constructed, in 2008, the two combined sewers were replaced by the installation of a new sewer around the perimeter of the hotel by the developers (see applicant's submission nos. 3.4 and 4.4 to the hearing).

- 8.12. A permanent wayleave is sought over this existing sewer, on part of plot 109 and over plot 110, to enable Irish Water to access the sewer for maintenance and repair. Any substantial works would be temporary and any area affected by the works would be reinstated by Irish Water (routine maintenance works can be carried out from the existing manholes). In addition, a permanent wayleave is sought over the remaining part of plot 109 and plot 108 in respect of part of a new sewer which is proposed from the entrance to the Civic Offices in Ballinasloe to manhole C9 (point 1 in the objector's submission nos. 3.4 and 4.4). This new sewer will replace an existing 375mm diameter trunk sewer that runs from the entrance to the Civic Offices to manhole C9, increasing the hydraulic capacity of the sewer and addressing structural defects in the existing sewer. It will discharge into the upstream end of the sewer laid at the time of the Shearwater Hotel (Irish Water manhole reference C9).
- 8.13. The wayleave around the perimeter of Shearwater Hotel is up to 15m in width. It exceeds that sought in respect of any of the other parcels of land under the CPO. As stated by the objector, it extends over pedestrian access to retail units, landscape areas, access to the entrance to the hotel, outdoor amenity associated with the hotel and the service road to the underground car park.
- 8.14. Whilst there are no current proposals by the objector for the development in the area associated with the wayleave, I would accept that in principle it may act as impediment to any building works within the area to the front of the hotel, facing the N6 and Canal Road, for example, a coffee kiosk or built extension to the bar or restaurant along Canal Road. I do not, however, consider this to be such to justify a recommendation to annul or amend the CPO.

Canal Road Frontage

- 8.15. During the oral hearing, both Irish Water and the objector agreed that the location of the sewer along the Canal Road frontage, with visible manholes, was evident. The location of the sewer is indicated in the applicant's submission nos. 3.4 and 4.4 to the hearing. These indicate that sewer runs centrally through the proposed wayleave, c.5 to 7m from the façade of the hotel, and along this length of the hotel building, at a depth of c.6 m to 6.5m.
- 8.16. At this depth, and in poor ground, I would accept that in the event of a collapse of the sewer or other structural defects, access to it would require shuttering to provide a

safe work environment. Further, I would accept that a wide working area would be required ideally on each side of the sewer, in order to provide safe access to the sewer. Whilst I accept that this would impact on the external area of the hotel and uses referred to, any such works would only take place in the event that the sewer failed. In this regard, I note that the sewer has been in operation since 2008 with no defects. Further, any repair or maintenance works would be carried out for a short duration and the hard and soft landscaping reinstated. Whilst I accept that the proposed wayleave could impede the development of the external area of the hotel along Canal Road, any development of these lands is likely to be relatively modest, given the uses already in place and the small external area of the hotel. Any uses would also be subject to the statutory planning process.

- 8.17. In addition to the above, the private sector interest in the potential development of these lands has to be balanced with the public interest in the safe and efficient operation and maintenance of the town's main sewerage system. As the existing sewer conveys a substantial proportion of the wastewater emanating from Ballinasloe Town and as the sewer is already in place and has been constructed at depth and in close proximity to the Shearwater Hotel, I consider that it is reasonable that Irish Water generally acquire the extent of wayleave proposed. However, as the location of the sewer has been established, I consider that there is no need for the wayleave to extend, in this area, to the built area of the hotel, i.e. the keg room and ventilation shafts associated with the car park (see submission no. 3.4). These areas could be reasonably omitted from the wayleave by way of modification.

N6 Frontage

- 8.18. It is evident from the information presented by the parties to the oral hearing that there are no 'as built' drawings showing the sewer along the N6 frontage or the construction of the elevated walkway (cantilevered structure or walkway constructed between hotel wall and retaining wall to roadside). There is, therefore, a lack of clarity regarding the location of the sewer along the N6 frontage, with the applicant of the view that it is under the cantilevered walkway providing pedestrian access to the retail units and the objectors that it lies outside of the elevated walkway.
- 8.19. I note that the objector's drawing (submission no. 4.4 to the hearing) indicates that, in the area of the retail units, the sewer lies between 2m and 4m north west of the

façade of the building, which would indicate that it lies, at least in part, under the raised walkway.

- 8.20. Again, having regard to the important role of the sewer in Ballinasloe in the towns sewer system, its depth and the prevailing ground conditions, I consider that it is in the interest of the public and construction workers that adequate access is allowed for, to the sewer to enable maintenance and repair in the longer term. Within this context and in the absence of certainty regarding the location of the sewer, I consider that the width of the wayleave, as proposed, is necessary and reasonable, for example, it would be difficult to recommend a narrower wayleave, as it may not extend to the exact location of the sewer or provide a sufficient working area to enable access to the sewer.
- 8.21. In summary, having regard to the depth of the existing sewer that traverses Plots 109 and 110, the poor ground conditions in the area, and the absence of 'as built' drawings for the location of the sewer along the N6, I consider that the applicant has demonstrated that the proposed lands are suitable for the proposed works (maintenance and repair of the sewer) and not excessive i.e. they are necessary to facilitate safe access to the existing sewer.

Whether Works to be Carried out on the Property Accord with the Development Plan under the Planning Acts

- 8.22. Policies of the Galway County Development Plan 2015 to 2021 and the Ballinasloe Local Area Plan 2015 to 2021 support Irish Water in the implementation of their Capital Investment Plan, the provision of appropriate water and waste water facilities in the County and the provision of appropriate waste water collection facilities in Ballinasloe in particular.
- 8.23. I consider, therefore, that the proposed works are in accordance with the development plan for the area.

Any Alternative Methods of Meeting the Community Need

- 8.24. In their submissions to the Board Irish Water state that:
- Much of the sewer laid around the perimeter of the hotel is constructed under the cantilevered overhang that forms part of the underground car park, which limits the possible tie in points for any new sewer. Manhole C9 (point 1 in objector's

submission no. 3.4 and 4.4) at the upstream end of the sewer, is not laid beneath the overhang and therefore provides a most feasible tie in point (constructability, cost efficiency and engineering design).

- An alternative to avoid entering the Shearwater Hotel lands would be to lay c.230m of a new sewer around the perimeter of the hotel, in the public road (up to 5.5m deep). This would entail unreasonable cost and would result in additional disruption to road users and would likely require a road closure for the duration of its construction (8-12 weeks).

8.25. As stated, prior to the construction of the Shearwater Hotel, it is my understanding that two public sewers ran across the site. These were replaced with the existing, privately owned, perimeter sewer when the Hotel was constructed. This sewer forms an important component of the town's sewer system and itself connects ultimately to the towns WWTP at Pollboy. Given that the existing sewer is integrated with the towns sewer system, has been sized to accommodate the future requirements of the town, it would seem appropriate and cost efficient to connect into it. Given the lack of certainty regarding the location of the existing sewer alongside the N6, it also seems appropriate to tie it into manhole C9.

8.26. I would accept that an alternative to acquiring a wayleave over private lands at the Shearwater Hotel would be to construct a new sewer in the public footpath, around the perimeter of the hotel. However, as stated by Irish Water, I would accept that this would be a costly and unnecessary alternative. Further, having regard to the need to provide shuttering for the deep excavation, works are likely to extend across much of the public road requiring temporary closure and disruption to road users and the existing sewer was, itself designed to accommodate and be part of the town's sewer network.

8.27. I would accept, therefore, that the applicant has considered alternative means to upgrade the public sewer in the vicinity of the Shearwater Hotel and to provide adequate access to the sewerage network for maintenance purposes, but that these are not reasonable or overriding in this instance, on the grounds of cost and practicality.

Legal Matters

- 8.28. During the course of the oral hearing, Irish Water raised issues regarding the ownership of Shearwater Hotel. Notably, they stated that (a) since dissolution of the Shearwater Plaza Hotel Management Company the Hotel was in the ownership of the State, and (b) Myrtlevale had no proprietary interest in the hotel. However, they did accept that as lessees of the hotel, the Melville family were entitled to make objections to the CPO. Irish Water's arguments are supported by submissions to the hearing and have not been disputed by the objector. I am satisfied, therefore, that legitimate objections have been made in respect of the proposed CPO and that it should therefore be adjudicated on by the Board.
- 8.29. The objector refers to their correspondence from Irish Water, which wrongly indicates the area of the Plot nos. 108, 109 and 110 (submission no. 5 to the hearing). Whilst I acknowledge that this letter to the objector incorrectly states that area of the plots referred to, the deposit map (drawing no. IW/10001639/CPO/001) correctly illustrates the area to which the wayleave applies and indicates the corresponding area in hectares. Having regard to this, and the detailed matters raised by the objectors, I do not consider that there was any confusion regarding the land parcels to which the wayleave in respect of plot nos. 108, 109 and 110 applies.

9.0 Recommendation

- 9.1. Having regard to the above, I am satisfied that the process and procedures undertaken by Irish Water have been fair and reasonable and that Irish Water have generally demonstrated the needs for the lands and that the acquisition of lands for the purpose of a wayleave are necessary, suitable and proportionate. I consider that the proposed acquisition of these lands would be in the public interest and the common good and would be consistent with the policies of the Galway County Development Plan 2015 to 2021 and the Ballinasloe Local Area Plan, 2015 to 2021. I recommend, therefore, that the Board CONFIRM the above Compulsory Purchase Order with modifications, based on the reasons and considerations set out below.

10.0 Reasons and Considerations

Having considered the objections made to the compulsory purchase order and also having regard to the following;

- (a) The requirements of the Urban Wastewater Treatment Directive 1991 and the Urban Waste Water Treatment Regulations 2001-2010;
- (b) The policies and objectives of the Galway County Development Plan 2015-2021 and the Ballinasloe Local Area Plan 2015-2021;
- (c) The deficiencies in the existing water supply and wastewater infrastructure in Ballinasloe;
- (d) The purpose for which the lands are to be acquired as set out in the compulsory purchase order;
- (d) The community need, public interest served and overall benefits to be achieved from the proposed road development; and
- (e) The submissions and observations made at the Oral Hearing held on 8th March 2017

It is considered that, the permanent and temporary acquisition by Irish Water of the land in question as set out in the order, schedules and on the deposited maps, are, subject to the modification set out below, necessary for the purposes stated and the objections cannot be sustained having regard to the said necessity.

11.0 Modifications

1. The wayleave extending over Plot no. 110 shall exclude the ventilation areas to the underground car park and keg room of the Shearwater Hotel as shown on submission no. 3.4 to the oral hearing.

Deirdre MacGabhann
Planning Inspector
22nd March 2017