



An
Bord
Pleanála

Record of Meeting

Galway Harbour Extension

Case Reference	61.PA0033		
Description	Galway Harbour Extension		
Case Type:	Section 37E Application		
Date:	13 th December 2016	Start Time:	3.10 p.m.
Location:	Offices of NPWS	End Time:	4.45 p.m.
Chairperson:	Rachel Kenny Director of Planning	Executive Officer:	Kieran Doherty

Attendees:
Representing An Bord Pleanála
Rachel Kenny – Director of Planning
Philip Green – Assistant Director of Planning
Kieran Doherty – Executive Officer
Representing National Parks and Wildlife Service
John Fitzgerald – Principal Officer
Niall Redmond – Assistant Principal Officer
Gabriel Staunton – Higher Executive Officer
Ciaran O'Keeffe - Principal Officer
Karen Gaynor - Wildlife Inspector
Gregory McLucas – Legal Advisor

Representing Galway Harbour Company
Éamon Bradshaw - Chief Executive Officer, Port of Galway
John Kelly – Project Director, Tobin Consulting Engineers
Gus McCarthy – McCarthy, Keville O’Sullivan, Planning & Environmental Consultants
Dr. Brendan O’Connor – Senior Ecologist, Aquafact
Brendan Rudden – Tobin Consulting Engineers

Introduction

Prior to the tripartite meeting, a brief meeting took place between the representatives of An Bord Pleanála and the National Parks and Wildlife Service.

Clarification as to where the application was in terms of the planning process was discussed. The representatives of ABP confirmed that no decision had been made by ABP on the planning application for the proposed development, Galway Harbour Extension. However, ABP had formed the opinion that consent for the project could not be given under Article 6(3). To take the application forward consideration under the derogation requirements of Article 6(4) of the Habitats Directive would be necessary. In reaching this view An Bord Pleanála had considered the issues of alternative solutions and whether imperative reasons of overriding public interest applied to the case. Initial submissions on compensatory measures had therefore been sought from the applicant. As the competent authority in relation to the determination of the planning application, ABP welcomed the assistance of the NPWS in the examination of the preliminary/proposed compensatory measures which were to be the subject matter of the tripartite meeting.

It was agreed that the focus of the tripartite meeting would be in relation to the identification and assessment of potential compensatory measures as outlined in ABP’s request to the applicant, Galway Harbour Company, and no further consideration was required in relation to those areas identified in the NPWS letter of 27th May 2016, specifically:

- Harbour Seal, qualifying interest for Galway Bay SAC.
- Turnstone and Great Northern Diver, Species of Conservation Interest for Inner Galway Bay SPA (004031),
- Cumulative effects arising from the previous development of Galway Harbour Enterprise Park.

It was noted that a number of meetings between representatives from the NPWS and Galway Harbour Company had taken place in advance of this meeting and that

on the basis of discussions at these meetings, a second report was prepared by Aquafact for the applicant. This document (dated December 2016) was received the afternoon before the tripartite meeting and as such full consideration of its contents had not been possible in advance of the meeting. It was however agreed that it would form the basis for the tripartite meeting and would be considered as the most up to date proposals in relation to compensatory measures.

ABP outlined that the tripartite meeting was being held in accordance with the provisions of 37F(1)(e) of the Planning and Development Act, 2000, as amended. A record of the meeting will be held on file.

Current Status of the Planning Application:

The representatives of ABP advised the applicant in brief of the meeting between NPWS and ABP representatives and the agreed position in relation to the current status of the planning application (as outlined above). ABP representatives stated that the purpose of the tripartite meeting was to discuss and progress the initial proposals for compensatory measures to address the impacts on the integrity of the Galway Bay Complex SAC, as submitted by the Harbour Company in November 2015. The NPWS previously commented on same in writing, and a copy of this had been furnished to the applicant. Further detailed documentation from the Harbour Company had been received by ABP and NPWS on the 9th December 2016 for consideration at this meeting.

The representatives of ABP stated that the Article 6(4) process had been discussed with the NPWS and, once the proposed compensatory measures had been finalised, ABP would be in a position to submit its Statement of Case required under s177AA to the Minister.

The representatives of ABP noted that generic guidelines for the Article 6(4) process had not yet been produced by the Department of Communications, Climate Action and Environment and referred to the role that the NPWS would play later in the IROPI process. NPWS input is to be welcomed at this stage to assist and better inform the process in accordance with guidance contained in the EC document 'Managing Natura 2000 Sites', which encourages tight coordination and cooperation between the Natura 2000 Authority (NPWS), the assessment authority (An Bord Pleanála), and the applicant.

The assistance provided to date by the NPWS was acknowledged, and it was recognised that it facilitated and informed the submission of the second report by the applicant on the 9th December 2016, which provided a preferred approach regarding identification of preliminary compensatory measures, albeit noting that further assessment was required and that we were still in phase 1 of the process.

Galway Harbour Company Documentation

The Harbour Company confirmed that the process was still in phase 1, as set out in the ABP letter of 29th September 2015 which requested proposals for compensatory measures. Where these measures are considered acceptable in principle then they will be developed further.

The Harbour Company's proposal dated 9th December 2016 (i.e. the most up to date set of proposals) is for a package of measures which focuses on three separate geographic areas within the Galway Bay SAC:

- Tawin,
- The area of stony bank near Renmore Lagoons,
- Shanmullen and Parknahalla / Muckinish aquaculture sites.

Tawin

It is proposed to develop a management plan for parts of the Tawin area where stony bank, salt marsh and intertidal complexes of fucoid-dominated reef, sand and mud flats occur, to bring about the improvement of these habitats. A report commissioned by the NPWS describes these areas as being of unfavourable/inadequate status. The salt marsh and stony bank habitats are under pressure from agriculture, dumping and excavation. Regulation of the agricultural practices, similar to the Rural Environment Protection Scheme (REPS) for farmers, would provide a more favourable outcome than designation. The management measures are listed in the Harbour Company's documentation, but would include taking away refuse, managed grazing, and the removal of coastal protection measures.

Renmore

A management plan is proposed to prevent the disappearance of the stony bank habitat at Renmore Lough. This would include the annual low-level reworking of the seaward strip of cobbles, removal of invasive species, and spraying of the cobbles with sea water.

Shanmullen and Parknahalla / Muckinish

These two aquaculture sites of intertidal reef, mud flat and sand flat habitat would have a programme to eradicate the non-native tunicate taxon *Didemnum*.

The Harbour Company is of the opinion that management of habitats is more effective than re-creation. Salt marsh is included in the proposals due to legacy issues associated with the development of the Galway Enterprise Park. The salt marsh can be addressed at the same time as stony bank.

An Bord Pleanála's Comments

The representatives of ABP stated that they had visited sites in the United Kingdom where the provisions of Article 6(4) of the Habitats Directive apply, and taken advice from the European Commission, and were of the opinion that the designation of sites issue was still to be clarified but that it may not be as critical as the provision and maintenance of compensatory measures. Separately, and in particular where it relates to stony bank, it was noted that where new mitigation measures are proposed as an alternative to compensation, appropriate assessment (or at minimum screening) in respect of such mitigation measures/works may be required, in addition to any potential requirement for appropriate assessment of the compensatory measures themselves.

The representatives of ABP stated that all of the proposals would be referred to its ecologist for comment in order for the Board to be satisfied that the measures proposed are appropriate.

NPWS Comments

The representatives of the NPWS stated that the action with regard to the intertidal reef may not be adequate if a maintenance regime should already be in place. Creating a reef would be very invasive and it would be difficult to prove the impact on the qualifying interest. Additional designation may be the appropriate option. Barna would be a like for like option; the saltmarsh is outside of the SAC but it could be upgraded. However, there could be appeals against designations.

All of the focus should not be put on any one option and the correct procedures must be followed to be legally valid. The proposed sites do have potential but there must be a method to assess the benefits of any measure put in place.

To cease the maintenance of defences could be less invasive than removing blocks that would be eroding anyway. However, management of habitat should not be composed of just letting nature take its course as this would not imply any significant measure of compensation. Any degree of doubt or uncertainty may require a compensatory area greater than that lost, to allow for the risk of potential failure of the compensatory habitat at least in part.

If a site is not owned by the Harbour Company, or binding agreements are not in place, then the feasibility of any management plan would be put into question. Long term maintenance must be assured. There should be no uncertainty around the compensatory measures.

Additional Comments

The Harbour Company stated that they were now three years into the planning process and very little progress had been made. The meeting was reminded that in the 2013 National Ports Policy, Galway Harbour is classified as of regional significance and should the harbour be transferred to local authority control, then the funding for the project could be in doubt. Firm timelines are now requested in order to progress the process. The Harbour Company carried out a review of the IROPI process in Europe (excluding the UK) and highlighted the example of a French railway where management of sites was the accepted approach. A view on whether the proposals are worth pursuing is required. Confirmation by 23rd January 2017 would allow a winter survey. With regard to Barna, there is a 'Seaweed Right' between the field boundary and the shore which is in 32 different ownerships.

The representatives of ABP stated that this was the first case of its kind before ABP and, therefore, it must be confident that the process followed is correct. The next steps would be to consider the latest material submitted by the Harbour Company, have it reviewed by ABP's ecological consultant, including potentially seeking legal advice, and liaise further with the NPWS. This should be completed by the start of February 2017.

It was noted that the potential for the applicant to have to go through the IROPI process had been discussed at the pre-application consultation stage during which it was pointed out to the applicant the potential or likely time required to go through such a process.

Conclusion

The Harbour Company is confident that the proposals are appropriate and that management plans, in partnership with owners, are workable. The representatives of the NPWS are of the opinion that the proposed measures appear to be positive, however, further surveys are required on the potential sites as some areas may fail the survey requirements, or agreements may not be possible with landowners. The representatives of ABP stated that they would revert to the other parties by the first week of February 2017. In the meantime, a copy of the record of this meeting will issue to the Harbour Company and the NPWS, and any comments on same will be held on the ABP case file.

Rachel Kenny
Director of Planning
January 2017