



5th July 2019

To the Mayor & Each Member of Galway City Council

Item 4 (e) on the Agenda Ordinary Council Meeting of Galway City Council

8th July 2019

Sailín to Silverstrand Coastal Protection Scheme - Status Update

Dear Councillors,

Background

The purpose of the proposed Coastal Protection Scheme is to implement protection and management measures necessary to arrest the ongoing serious coastal erosion occurring at the drumlins at Knocknagoneen and Gentian Hill and also to incorporate Galway City Council's long term objective of providing a coastal walk between the promenades of Salthill and Silverstrand. The proposed scheme comprises the provision of rock armoured revetments at the base of Knocknagoneen and Gentian Hill drumlins. Walkways were to be incorporated into the crest of the revetments where possible and these would be linked by low key pathways along the existing terrain with two footbridges over the tidal entrances to Lough Rusheen and Sailín.

Noteworthy Events and Time line in regard to this project

This Project was originally granted planning permission by An Bord Pleanála in 2007. A full copy of the planning history of this project was presented to the April 2019 Meeting of Galway City Council (copy attached).

Standard practice at that time was that detailed design would be carried out after the grant of permission which could involve changes that improved the project and these would be acceptable as part of the planning process.

The recession in Ireland happened very shortly after this decision and funding for all projects such as this was not available. It was therefore many years later when funding opportunities became available and detailed design of the project recommenced.

In December 2007, the Court of Justice of the European Union, took a case against Ireland and ruled against Ireland on five of the six charges brought. These all related to Ireland's ability to protect habitats principally for Wild Birds. Following this the Birds and Natural Habitats Regulations 2011 were brought into effect on September 27th 2011 under SI 477/2011. After the implementation of this the protection of habitats became far more controlled in order to comply with the legislation.

The ruling by the European Court of Justice (ECJ) (Sweetman vs An Bord Pleanála) in relation to the Lough Corrib site – N6 Galway City Outer Bypass road scheme made on the 11th April 2013 (in relation to an

assessment of the implications for a protected site of a plan or project) means effectively, that it makes it seemingly very difficult, if not impossible under certain circumstances, for projects to be permitted where even the smallest areas of protected habitats will be destroyed as a consequence. However there is a caveat that it is not clear whether the judgement only applies to priority habitats.

All of these events are significant in relation to the extended timeline between the granting of permission and the detailed design as the legislation had completely changed by the time funding was made available after the recession to continue with the scheme. In addition, recent court rulings have made it even more difficult to develop in proximity to or within a habitat. It should be noted that the detailed design yielded substantial environmental improvements to the original design by reducing the area of the revetments and the size of the bridge supports. However the proposal is different to what had originally been granted planning permission.

Recent Events

An application for a foreshore licence was submitted to the Department of Environment, Community and Local Government in November 2014 (now the Department of Housing, Planning and Local Government). The Department has raised concerns about the validity of the original permission due to the changes in legislation coupled with the changes in footprint of the original design.

Galway City Council commissioned consultants to review the planning approval and the foreshore licence application to assess its validity in light of recent correspondence, changes in legislation and recent Court rulings. The final version of this report was received on the 28th June 2019. In addition, following the recommendation of the Consultants, Galway City Council engaged in discussions with the National Parks & Wildlife Service.

Findings of the Report

A copy of the full report is attached to this report for the elected members. The report essentially gives three options to progress this scheme. These Options and the steps required and the possible outcomes are summarised in flowcharts in Appendices E,F and G of the Consultant's Report.

Option 1: explores the possibility of using the detailed design version of the original scheme because while it contains changes these constitute environmental improvements. This would require going to An Bord Pleanála and requesting if this is a material change which has three possible outcomes.

- 1) Not a material change
- 2) It is a material change with no likely significant adverse effects
- 3) It is a material change with significant adverse effects

In the Consultants opinion, both outcomes 2 and 3 would most likely result in an ABP refusal due to the permanent loss of SAC and recent case law. Outcome 1 is a possibility but the chances of it not being a material change are slim as we know there have been significant changes although improvements to the original footprint.

Option 2: explores the option of a brand new planning application. In the Consultants opinion, the most likely outcome would be an ABP refusal due to permanent loss of habitat and recent case law.

Option 3: explores the option of reverting to the original scheme for which planning permission was granted. This would require the withdrawal of the current Foreshore Licence application and the preparation of a new NIS based on the original design. In advance of this it would require significant design costs so that all of the impacts on the habitat associated with the construction and transporting in and out materials at these locations could be specified and then considered as part of the NIS. A new Foreshore licence would then have to be applied for to the Department of Housing, Planning and Local Government,

and the Department would have to carry out an Appropriate Assessment based on the information submitted in the Natura Impact Statement. In the Consultants opinion, the most likely outcome would be a refusal of the Foreshore licence by the Department due to permanent loss of habitat and recent case law.

Discussions with National Parks and Wildlife Service

At the same time as the Consultants were preparing this report, some informal discussions were instigated with National Parks and Wildlife Service. Initially these discussions were going to be formal and in the presence of the Department Officials but it was agreed that because there is an open Foreshore Licence Application with the Department that these discussions may compromise the integrity of the Foreshore Licence process.

Some of the findings of these informal discussions are as follows:

1. There are concerns about the validity of the original Environmental Impact Assessment in terms of its age (EIS from 2006), as all parts of the development, including methods of construction and lands required, were not included or adequately described. Standards have changed (since 2007), including a number of significant successful legal challenges to EIA and appropriate assessment decisions in Ireland (including in Galway) in the Irish and European courts, and because the current environmental baseline is not the same as in 2007. The construction impacts of the project were not assessed in the EIS/EIA and that is a significant deficiency. The original project was not subject to an appropriate assessment.
2. Coastal protection schemes are expensive and can have unintended adverse impacts on coastal processes of erosion and deposition, both in the immediate vicinity of, for example, revetments, and at greater distances.
3. At the time approval was received, it was standard practice to advance the project to a final design after approval although this could lead to changes from what was approved. This has caused significant problems, particularly where temporary works and construction areas were not included (and also not covered by the approval, the EIA or AA), and there are cases where this has resulted in adverse effects on the integrity of European sites. This type of approach is no longer acceptable from planning, EIA or AA perspectives. In addition to the works areas in this case, the details of components such as the paths on the stony banks (=Annex I habitat) had not been set out, and it was pointed out that the location of the path from the Gentian hill along seaweed point inundates at high tides.
4. In response to a question of whether the scheme was necessary for the management of the SAC (or SPA) as a European site, it was clarified that the conservation objectives allow for the natural dynamics and coastal processes of erosion and deposition to occur and continue so that habitats change and evolve "subject to natural processes" over time. NPWS had never sought or supported the coastal protection measures as a means to prevent a new breach into Lough Rusheen, even though this was put forward as a reason for the scheme in the original application.
5. Because the Council's NIS confirms adverse effects on the integrity of a European site, and because the Council is now obliged to engage with the Board before the foreshore process can conclude, there is no option but to go back to re-examine the project. If the need for the scheme was justified in terms of its need to protect human health and public safety this could alter the picture, as the Article 6(4) procedures of the Habitats Directive could be examined. However this would need to be substantiated by relevant studies, complete environmental impact assessments, and a new application to An Bord Pleanála.

Conclusion

The major concerns with this project are as follows:

- The Planning permission received pre-dates significant changes in environmental law and particularly in light of recent Case Law it is very likely to be challenged even if it was possible to get a Foreshore Licence
- The validity of the existing planning permission is extremely questionable and to explore this further would be time consuming and very costly
- The Foreshore Licensors have requested clarification on the validity of the planning permission based on this and the only way to clarify this is to undergo a lengthy and costly approval process with An Bord Pleanála, which is unlikely to succeed
- The major problem is that the proposal would result in a permanent loss of habitat (i.e. the rock armour would permanently impact on the foreshore) and no mitigation measures can remedy this permanent damage

Recommendations

It is therefore recommended that this project should be discontinued in its current format as further attempts to advance this project are unlikely to succeed, will be very costly and ultimately be a waste of public money. What is recommended is to advance an alternative route for a walkway/cycleway to Silverstrand as is an option in the current City Development Plan. The City Development Plan Map 2017-2023 shows a cycleway route from Salthill Promenade to Silverstrand Beach and an adjoining Recreation and Amenity Greenway along the north coast of Rusheen Bay. These Greenways represent an alternative walking/cycling route to the current walking only scheme.

The alternative Greenways forms part of a proposed extensive citywide coastal greenway from east to west, including the Barna Greenway that would link with riverside walkways to the city. The Galway Transport Strategy also identifies green corridors that will offer safe and direct routes for both pedestrians and cyclists to work/school and or for leisure; including from the City Centre to Barna (The Barna Greenway).

These two alternative Greenways shown in the Development Plan 2017-2023 will be subject to detailed design and planning consent including Appropriate Assessment, and overlap with the Galway Bay Complex Special Area of Conservation and run near the Inner Galway Bay Special Protection Area. The impact of a designed alternative Greenway on these Natura 2000 sites has not been assessed. However it is recommended as the only possible way forward is to explore these options and other options that are outside the special areas of conservation if they can be identified to achieve the intention of leisure access from Salthill to Silverstrand.

In relation to coastal erosion and protection of Gentian Hill and Lough Rusheen, this generally lies outside the remit of the City Council. If it can be proven by extensive studies to cause a significant human risk that is likely to happen, other bodies, including the City Council, may have a role to play in the issue.

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Housing, Environment & Climate Change, Recreation & Amenity