



11th June 2020

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Subject: Appeal FAC083/2019 against licence decision CN83422

Dear [REDACTED]

I refer to the appeal to the Forestry Appeals Committee (FAC) in relation to the above licence issued by the Minister for Agriculture, Food and the Marine. The FAC established in accordance with Section 14 A (1) of the Agriculture Appeals Act 2001 has now completed an examination of the facts and evidence provided by all parties to the appeal.

Background

Licence CN83422 for 8.56 hectares of afforestation at Kilmahon, Co. Longford was issued by the Department of Agriculture, Food and the Marine on 11th April 2019.

Hearing

A hearing of appeal FAC083/2019 was held by the FAC on 9th June 2020.

FAC Members: Mr. Des Johnson (Chairperson), Mr. Jim Byrne, Mr. Pat Coman, Mr. Vincent Upton

Decision

Having regard to the evidence before it and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to confirm the decision of the Minister regarding licence CN83422.

The licence relates to afforestation of 8.56 hectares with pedunculate oak, alder and other broadleaves and 1,400 metres of stock fencing. The site is described as enclosed, agricultural land currently in animal production with a grass, rush vegetation type. Site preparation is proposed through mounding and woody weed removal with no additional drainage. No fertiliser is proposed, and herbicide weed control would take place in years 1-3, in addition to manual control. Hedgerows will be maintained on site and are marked on the Bio-map. A relevant watercourse or drain runs adjacent to the southwestern boundary and a setback is included. Setbacks from the public road and a dwelling (setback of 60m) are also included. There is a stream running southeast-northwest to the south of the proposal.

There is one appeal against the decision. The grounds suggest that on the basis of information submitted it is not possible to grant a Licence which would be in compliance with the EIA and Habitats

Directives having regard to specific judgements of the CJEU. Furthermore, the grounds suggest that the test for Appropriate Assessment Screening in Irish Law is set out by Geoghegan J. in *Kelly v ABP* and goes on to quote from that judgement. There is also reference to the assessment of cumulative effects.

In a statement to the FAC, the DAFM stated that they are satisfied that the decision met their criteria and guidelines and that they confirm the licence. The DAFM suggest that the site is not hydrologically connected to any Natura 2000 site and that the closest Natura sites are in excess of 10 km away. They also suggest that the proposal will not have any impacts on any Natura site and its qualifying interests. They note that the proposal is for the planting of Oak and Alder.

In considering the appeal and before making a decision, the FAC undertook a screening and examination of the proposal in relation to the requirements of the Habitats and EIA Directives respectively, and copies of these considerations are contained in the public file.

There are four European sites within 15km of the proposal. While there are no marked rivers on or adjacent to the proposal a relevant watercourse is marked on the Bio-map along the southwest of the proposal, which lies in the Upper Shannon Catchment. This watercourse most likely drains into the stream running southeast-northwest to the south of the proposal to ultimately join the Black River and flow south-westerly entering the Lough Forbes Complex SAC and Ballykenny-Fisherstown Bog SPA after a distance of some 23 km. Given the nature of the proposal and the connection to the SAC and the distance involved significant impacts on the SAC could not arise and the proposal is beyond the distance at which the foraging opportunities of the qualifying interest of the SPA might be impacted. There is no hydrological connection between the proposal and Clooneen Bog SAC and Brown Bog SAC, which lie in separate sub-catchments and at a considerable distance and the proposal could not impact on the hydrology or the integrity of these sites. Having regard to the scale, nature and location of the proposal, other developments in the area, the qualifying interests and conservation objectives of the European sites in proximity to the proposal, the nature of a hydrological connection and the separation distance to those sites, the FAC concluded that there is no likelihood of significant effects on any European site from the proposal alone or in combination with other plans or projects.

The proposal is for the planting of native, broadleaf trees on 8.56 hectares of agricultural land in a remote, rural area that borders a minor public road to the north along which a number of dwellings are situated. There is a 60-metre setback from a dwelling at the northeast of the site and a setback from the public road. Planting would be of deciduous species and the impact on the landscape is not considered significant. Traffic may increase during operations, but this will be temporary, and operations would not be out of keeping with land management in the area generally. There is a drain/watercourse running along the southern boundary and a setback is included in the design and other conditions on the licence should ensure that there is no real risk to water quality. There are no recorded monuments on the site and the closest one lies some distance to the west. There are a number of hedgerows on the site which will be retained, and the planting will broaden the range of habitats in the area. There are no designations on the land and the proposal is not considered likely to impact on European sites. There are other forests in the area, but these are dispersed across the landscape and are primarily coniferous

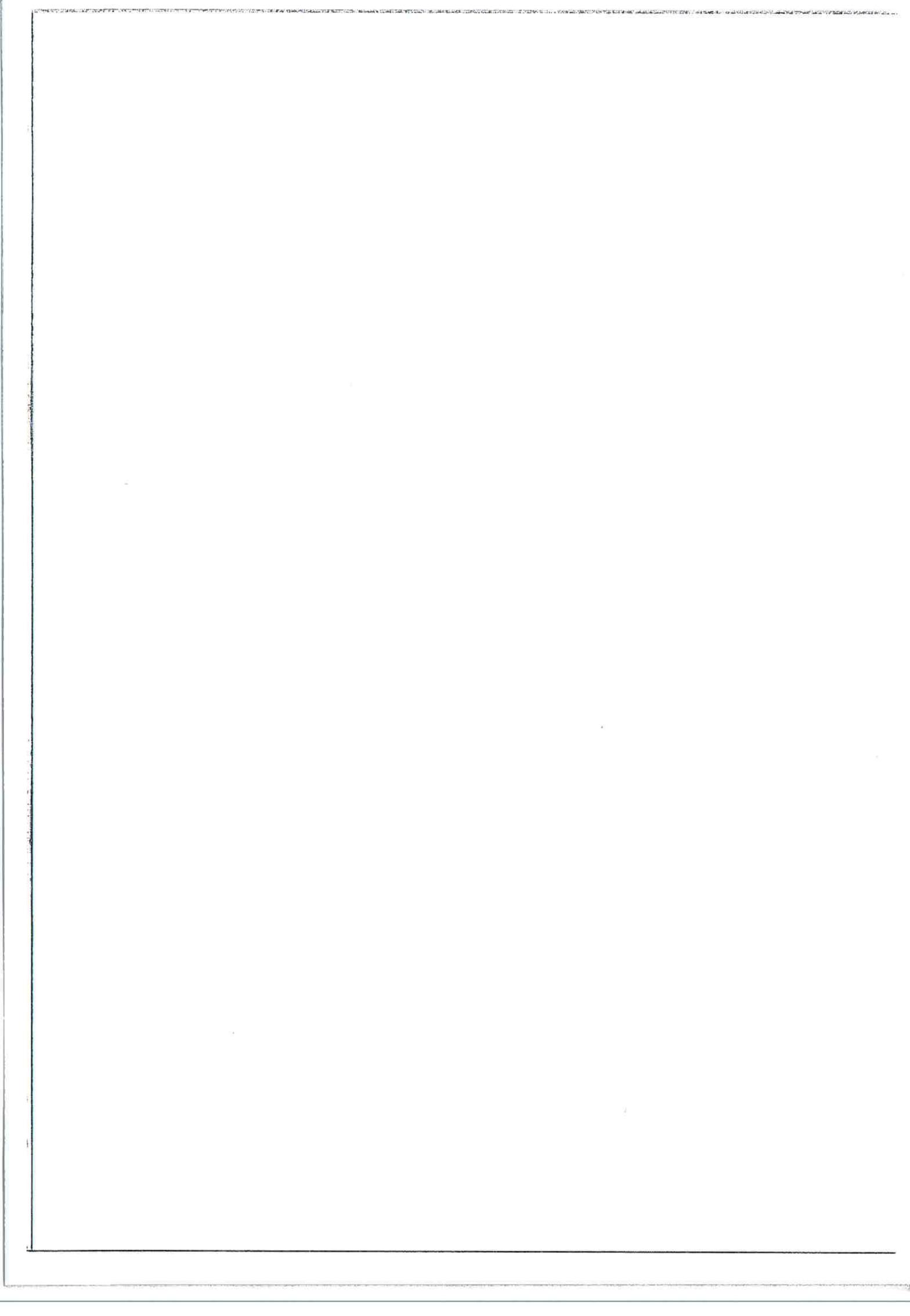
in nature. The FAC concluded that the proposed development alone, or cumulatively with other projects and land uses in the area, would not be likely to have a significant impact on the environment.

The FAC concluded that the proposal is in line with Government policy and good forestry practice. Before making its decision, the FAC considered all of the information submitted with the application, the processing of the application by the DAFM, the grounds of appeal, and any submissions received.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Pat Coman', written over a horizontal line.

Pat Coman, on Behalf of the Forestry Appeals Committee





10th June 2020

FAC083/2019 CN83422 Kilmahon, Co. Longford

Before making a decision, the Forestry Appeals Committee (FAC) undertook an appropriate assessment screening and an examination regarding the likelihood of impacts on the environment of the proposal in relation to the requirements of the Habitats Directive and the Environmental Impact Assessment Directive. These considerations were based on information provided by the applicant, DAFM and other parties to the appeal and information available in the public domain.

The licence relates to afforestation of 8.56 hectares with pedunculate oak, alder and other broadleaves and 1,400 metres of stock fencing. The site is described as enclosed, agricultural land currently in animal production with a grass, rush vegetation type. Site preparation is proposed through mounding and woody weed removal with no additional drainage. No fertiliser is proposed and herbicide weed control would take place in years 1-3, in addition to manual control. Hedgerows will be maintained on site and are marked on the biomap. A relevant watercourse or drain, runs adjacent to the southwestern boundary and a setback is included. Setbacks from the public road and a dwelling (setback of 60m) are included. There is a stream running southeast-northwest to the south of the proposal.

Appropriate Assessment Screening

Impacts of afforestation and associated operations generally might include habitat loss and creation, sedimentation and eutrophication of waterways during operations, improvements in water quality, changes in hydrology, climate and microclimate impacts, impacts on soil and water chemistry over the long term, noise and light disturbance during operations.

There are four European sites within 15km from the site which are listed below along with their direct distances and qualifying interests. Based on the scale and nature of the proposal and the surrounding landscape significant impacts on sites outside of this radius were not considered to have any likelihood. While there are no marked rivers on or adjacent to the site a relevant watercourse is marked on the Biomap along the southwest of the proposal, which lies in the Upper Shannon Catchment. This watercourse most likely drains into the stream running southeast-northwest to the south of the proposal to ultimately join the Black River and flow southwesterly entering the Lough Forbes Complex SAC and Ballykenny-Fisherstown Bog SPA after a distance of some 23 km. Given the nature of the proposal and the connection to the SAC and the distance involved significant impacts on the SAC could not arise and the proposal is beyond the distance at which the foraging opportunities of the qualifying interest of the SPA might be impacted. The NPWS site synopsis of the of the SPA states

At the time this site was designated as a Special Protection Area (SPA) it was being used by part of the Loughs Kilglass and Forbes Greenland White-fronted Goose population. The geese appear to have since abandoned the peatland sites in favour of grassland sites elsewhere. The site was regularly utilised during the 1980s and Greenland White-fronted Goose is regarded as a special conservation interest for this SPA. The last record of Greenland White-fronted Goose at this site was in 1990/91 (111 individuals).

There is no hydrological connection between the proposal and Clooneen Bog SAC and Brown Bog SAC, which lie in separate subcatchments and at a considerable distance and the proposal could not impact on the hydrology or the integrity of these sites.

There are no other forestry licences in the townland and very few other permissions including one for a slatted shed and storage tank which lies some distance to the northeast of the proposed planting. There are no plans or projects that would, in-combination with the proposed development, give rise to the likelihood of significant effects on any Natura 2000 site. There are no conditions on the licence that relate to the mitigation of impacts on a European site. Having regard to the scale, nature and location of the proposal, other developments in the area, the qualifying interests and conservation objectives of the European sites in proximity to the proposal, the nature of a hydrological connection and the separation distance to those sites, the FAC concluded that there is no likelihood of significant effects on any European site from the proposal alone or in combination with other plans or projects.

Site Type	Site Code	Site Name	Distance To (m)	Qualifying Interests (* denotes a priority habitat)	Conservation Objectives
SAC	1818	Lough Forbes Complex SAC	10276.78	Habitats 3150 Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation 7110 Active raised bogs* 7120 Degraded raised bogs still capable of natural regeneration 7150 Depressions on peat substrates of the Rhynchosporion 91E0 Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i> , <i>Alnion incanae</i> , <i>Salicion albae</i>)*	http://www.npws.ie/sites/default/files/protected-sites/conservation-objectives/CO0018_18.pdf
SAC	2348	Clooneen Bog SAC	11785.18	Habitats 7110 Active raised bogs* 7120 Degraded raised bogs still capable of natural regeneration 7150 Depressions on peat substrates of the Rhynchosporion 91D0 Bog woodland*	http://www.npws.ie/sites/default/files/protected-sites/conservation-objectives/CO0023_48.pdf
SAC	2346	Brown Bog SAC	13423.96	Habitats 7110 Active raised bogs* 7120 Degraded raised bogs still capable of natural regeneration 7150 Depressions on peat substrates of the Rhynchosporion	http://www.npws.ie/sites/default/files/protected-sites/conservation-objectives/CO0023_46.pdf
SPA	4101	Ballykenny-Fisherstown Bog SPA	10268.76	Birds A395 Greenland White-fronted Goose (<i>Anser albifrons flavirostris</i>)	http://www.npws.ie/sites/default/files/protected-sites/conservation-objectives/CO0023_46.pdf

EIA Preliminary Examination

The EU EIA Directive (Directive 2011/92/EU as amended by Directive 2014//52/EU) sets out, in Annex I a list of projects for which EIA is mandatory. Annex II contains a list of projects for which member states must determine through thresholds or on a case by case basis (or both) whether or not EIA is required. Annex II contains a class of project specified as "initial afforestation and deforestation for the purpose of conversion to another type of land use" (Class 1 (d) of Annex II). The Irish Forestry Regulations 2017 in relation to forestry licence applications require the compliance with the EIA process for applications relating to afforestation involving an area of more than 50 Hectares, the construction of a forest road of a length greater than 2000 metres and any afforestation or forest road below the specified parameters where the Minister considers such development would be likely to have significant effects on the environment.

The proposal is for the planting of native, broadleaf trees on 8.56 hectares of agricultural land in a remote, rural area that borders a minor public road to the north along which a number of dwellings are situated. There is a 60 metre setback from a dwelling at the northeast of the site and a setback from the public road. Planting would be of deciduous species and the impact on the landscape is not considered significant. Traffic may increase during operations but this will be temporary and operations would not be out of keeping with land management in the area generally. There is a drain/watercourse running along the southern boundary and a setback is included in the design and other conditions on the licence would ensure that there is no real risk to water quality. There are no recorded monuments on the site and the closest one lies some distance to the west. There are a number of hedgerows on the site which will be retained and the planting will broaden the range of habitats in the area. There are no designations on the land and the proposal is not considered likely to significantly impact on European sites. There are other forests in the area but these are dispersed across the landscape and are primarily coniferous in nature.

Having regard to the nature, scale and location of the proposal, the FAC concluded that there is no real likelihood of it resulting in a significant effect on the environment, itself or cumulatively with other projects, and that the submission of an Environmental Impact Assessment Report or formal screening is not required.

Vincent Upton On Behalf of the Forestry Appeals Committee

