



10 February 2021

Dear [REDACTED]

I refer to the appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine in respect of Reforestation approval CN83931.

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 the parties to the appeal.

Background

Reforestation CN83931 was granted by the Department on 26 May, 2020.

Hearing

A hearing of appeal 282/2020 was conducted by the FAC on 16 November, 2020.

FAC Members: Mr. Myles Mac Donncadha (Chairperson), Ms. Claire Kennedy and Ms. Bernadette Murphy.

Decision

The Forestry Appeals Committee considered all of the documentation on the file, including application details, processing of the application by DAFM, and the grounds of appeal before deciding to affirm the decision to grant this Reforestation (Reference CN83931).

The proposal is for Reforestation on a site that was previously clearfelled. The operations comprise of 6.62ha of Native woodland planting, with 1.04ha of Biodiversity, a total of 7.66ha. The project area borders a lake directly to the North and West (Saint Johns Lough). The area is also adjacent to agricultural land to the East and South. The project is not adjacent to the public road, access is gained by a private road.

Soils are reported as mainly podzolic in nature. The slope is predominantly flat to moderate (<15%), with an elevation range of 10m falling from South to North. The project does not lie within any designated area. It is within 15km of Cuilcagh – Anierin Uplands SAC (Code: 000584) which is 9km to the North West of the project area.

DAFM deemed it unnecessary to refer the project to external bodies. The DAFM Archaeology department imposed conditions for recorded monuments on site, which includes the protection of the monuments through exclusion zones.

The Forest Service District Inspector undertook a Stage 1 screening assessment in relation to the provisions of the Habitats Directive using the Appropriate Assessment Screening protocol in place at the time (guidelines dated 05/11/19). One Natura 2000 site (Cuilcagh – Anierin Uplands SAC 000584) was identified along with its qualifying interests and was assessed to determine if the proposed development would give rise to the likelihood of significant effects. An in-combination assessment for all forest and non-forest projects was also carried out on 20/11/2019.

The Assessment concluded that the activity could be licenced on the basis that the project would not be likely to have a significant effect on the Natura 2000 or its qualifying interests, due to the position of the project area downstream from the Natura site, and the subsequent lack of any hydrological connection.

DAFM issued a licence on 26/05/2020 together with the standard afforestation licence conditions, compliance with Ecological Survey and Management Plan as submitted and an additional condition specifying that all operations must adhere to the archaeological guidelines imposed.

There is one appeal against the decision of the licence, in that it does not comply with the Environmental Impact Assessment, Birds Directives and Habitats Directives. The appellant noted that if the development is within 15km of a Natura 2000 site it has to be screened in regardless if there is a possible effect. He also stated that he has made similar appeals in the past due to the misunderstanding of the legal requirements.

DAFM responded to the grounds of appeal stating that the licence application had been processed and screened according to Forest Service Appropriate Assessment Guidelines and Standard Operating Procedures relevant at the time. The district inspector stated that the rationale for the screening decision is on file.

In addressing the grounds of appeal, the FAC considered, in the first instance, the contention that the proposed development should have been addressed in the context of the EIA Directive. The EU Directive 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. Neither afforestation nor deforestation (nor clear-felling) are referred to in Annex I. 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 Regulations, 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 FAC concludes that the replanting, as part of a forestry operation, with no change in land use, does not fall within the classes referred to in the Directive, and similarly are not covered in the Irish Regulations (5.1. No. 191 of 2017).

Under Article 6(3) of the Habitats Directive, any plan or project not directly connected with or necessary to the management of a European site, must be subject to an assessment of the likely significant effects the project may have on such a designated site, either individually or in combination with other plans projects, having regard to the conservation objectives of that designated site. In this case, the DAFM undertook a Stage 1 screening including in-combination effects in relation to the listed Natura 2000 site and concluded that the proposed project would not have a significant effect on this site and its Qualifying Interests.

The FAC had regard to the record of the decision under appeal and the submitted grounds. The FAC is satisfied that the procedures adopted by the DAFM in reaching the conclusion that the proposed development would not be likely to give rise to significant effects were correct based on the AA screening process in use at the time.

In deciding to affirm the licence decision, on the balance of evidence, the FAC is satisfied that there was no serious or significant error or series of errors made in making the decision or that the decision was made without complying with fair procedures. The FAC concluded that the proposed development would be consistent with Government policy and Good Forestry Practice.

Yours sincerely

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Mr. Myles Mac Donncadha (on behalf of the FAC)