



[REDACTED]

31 December 2020

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Minister for Agriculture, Food and Marine in respect of Afforestation approval CN83020.

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

Afforestation licence CN83020 was granted by the Department of Agriculture, Food and the Marine (DAFM) on 17 April 2019.

Hearing

A hearing of appeal 087/2019 was conducted by the FAC on 7 December 2020.

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

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 set aside & remit the decision to grant this Afforestation (Reference CN83020).

The proposal is for afforestation of 4.03 hectares of enclosed land with an intimate mixture of Sitka spruce/Common Alder in Leitry Upper, Co. Cork. Ground preparation would include woody weed removal and mounding, and there is to be some drainage in conjunction with the mounding. There would be angle notch and slit planting and 250kg granulated rock phosphate would be applied. Herbicide control is proposed in years 0, 2 and 3. The application identifies the predominant soil type underlying the project area as mineral, the aspect is south/neutral, and the elevation is 200m to 220m.

The area is rural and agricultural in nature, with a dispersed settlement pattern. The project area borders forest to the north and east and agricultural land to the south and west. The project area is not adjacent to the public road. The area covered by the proposal is not crossed by/nor adjoins an aquatic zone. A stream to the north of the proposal area is separated by forest and agricultural land and this same stream as it flows south westerly to join the River Illen is separated from the proposal area by agricultural land and a public road. The Clodagh River to the east of the proposal area also flows south westerly to join the River Illen and the area is in the Illen subcatchment.

The proposal area is not within a European site. The closest European site is the Bandon River SAC at c.10.8 km, with the next closest being the Derryclogher (Knockboy) Bog SAC at c.14.8 km. The Bandon River SAC lies to the east of the proposal area and the Bandon river flows eastwards away from the proposal area to enter the sea at Kinsale. There are no other designated Natura 2000 sites within a 15km radius of the project.

DAFM referred the licence to Cork County Council for consultation. A response was received but it stated it had no comments. On 12/02/2019 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. The project area was identified as being greater than 3km from any Natura 2000 site and does not overlap any FPM catchment and due to physical separation and an ecological pathway, the project was screened out for appropriate assessment.

DAFM issued a licence on 17/04/2019 together with largely standard licence conditions and the following specific silvicultural and environmental conditions; Plant small groups of birch, Scots pine, Rowan and whitebeam where possible, ensure a 3 rows of broadleaves face the view of neighbouring dwellings, adhere to forestry & landscape guidelines, all guidelines to apply.

There is one appeal against the decision in the nature of a broad statement that, based on the information available to the public, any approval would not be in compliance with the Environmental Impact Assessment and Habitats Directives. The DAFM responded to the grounds of appeal stating that the licence application had been processed according to their procedures; SI 191 of 2017 and the Forestry Act 2014, and that the plantation will incorporate landscaping with broadleaves to enhance the landscape and views of neighbouring land owners and that the planting proposal will not pose a threat to the environment.

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 decision under appeal relates to a licence for the afforestation of an area of 4.03 hectares, so is significantly sub-threshold for mandatory environmental impact assessment (EIA), as set in Irish Regulations, however there is a lack of evidence available to the FAC that the DAFM considered the requirements to take into account all the criteria set out in Schedule 3 of the Irish Regulations (S.I. 191 of 2017) to determine if this sub threshold project should be subject to an EIA.

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, the project area was identified as being greater than 3km from any Natura 2000 site and not overlapping with any FPM catchment, and it was concluded that the proposed project would not be likely to have significant effects on any Natura site due to physical separation and lack of ecological pathway and the project was screened out for appropriate assessment.

Based on the information before it, the FAC considered that the requirements of the Habitats Directive in respect of Stage 1 screening for appropriate assessment were not satisfactorily met prior to the granting of the licence. The FAC considers, there was an absence of consideration of Natura 2000 sites at a distance greater than 3km of the proposal area and there is no evidence that possible in combination effects with other plans and projects in the vicinity were considered for. The FAC considers these factors comprise a significant error in the making of the decision to grant the licence. In such circumstances, the FAC decided the decision of the DAFM should be set aside and remitted to the Minister to carry out a screening for appropriate assessment of the proposed development under the requirements of Article 6 of the Habitats Directive, and a determination regarding EIA requirements, before making a new decision in respect of the licence.

Yours sincerely,



Mr. James Conway (on behalf of the FAC)