



[REDACTED]

31 December 2020

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine in respect of Afforestation approval CN81203.

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 CN81203 was granted by the Department on 15 April, 2019.

Hearing

A hearing of appeal 117/2019 was conducted by the FAC on 14 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 CN81203).

The proposal is for afforestation of 0.92 hectares with a species composition of Sitka spruce (85%), and additional Broadleaves (15%) in an enclosed site in Cloonagh, Co. Mayo. It has a south west aspect and there is adequate access to the site. Ground preparation would include ripping and the planting method would be angle notch. Herbicide control is proposed in year 1 to 3. The application identifies the predominant soil type as mineral. The slope is predominantly steep (30 to 45). The project area does not adjoin or contain an aquatic zone. The vegetation type within the project area is grass.

DAFM referred the license to the NPWS for consultation as the site was within 3 km upstream of SAC 0002298 River Moy. NPWS responded indicating that they had no objection.

The Forest Service Inspector undertook a desk assessment on 11 May 2018 and 1 February 2019. On 27 March 2019 the Forest Service 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. They stated that the project area did not overlap a Natura 2000 or an FPM catchment area but was within 3km of a Natura site. They concluded that there is no possibility that this project will have significant effect on any Natura site, due to physical separation and the lack of any ecological pathway. DAFM deemed that an Appropriate Assessment was not required for this project.

DAFM issued a licence on 15 April 2019 together with the standard licence conditions with additional conditions.

There is a single appeal against the decision to grant the licence. The grounds contend that, based on the information supplied, it is not possible to grant a licence in accordance with the provisions of the Habitats

and EIA Directives. The appellant referred to a number of judgements which they stated would clarify the interpretations of the directives as follows –

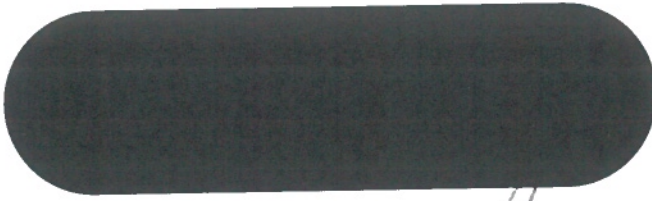
- Case C-258/11, Peter Sweetman and Others v An Bord Pleanala
- Case C-164/17, Edel Grace and Peter Sweetman v An Bord Pleanala
- Case C-323/17 People over wind and Peter Sweetman v Coillte Teoranta
- Case C-461 Brian Holohan and Others v An Bord Pleanala

In a statement to the FAC, DAFM responded to the grounds of appeal stating that the decision to issue the licence was in accordance with their procedures, S.I. 191/2017 and the 2014 Forestry Act. They said that they found no issue with the inspector's original decision based on the standard operating procedures relevant at the time. The AA process has changed since. The site has no hydrological connection to any Natura 2000 site. Under the current AA procedures, this file would be screened out based on the Foraging & Habitat Tables utilised as part of the current AA screening process.

The FAC had regard to the record of the decision under appeal and the submitted grounds. There is no evidence before the FAC regarding other plans and projects that might have been considered in the appropriate assessment screening or may be present in the area.

The FAC cannot therefore determine whether the appropriate assessment screening, undertaken by the DAFM and referred to in the grounds of appeal, was sufficient to conclude that there is no likelihood of the proposal resulting in a significant effect on a European site itself or in combination with other plans and projects. The FAC is satisfied that this constitutes a significant error and is therefore setting aside the decision and remitting it to the Minister for the appropriate assessment screening to be undertaken and documented, to include a consideration of all relevant Natura 2000 sites, plans and projects in combination with the proposal.

Yours sincerely



Ms. Claire Kennedy (on behalf of the FAC)

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