



[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 CN84116.

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 CN84116 was granted by the Department of Agriculture, Food and the Marine (DAFM) on 26 August 2019.

#### **Hearing**

A hearing of appeal 200/2019 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 CN84116).

The proposal is for afforestation with a species composition of Sitka spruce (85%) and Additional Broadleaf (15%) of 4.74 hectares in an enclosed site in Ardcost, Co. Kerry. Ground preparation would be by mounding and the planting method by slit planting. Fertiliser of 250kg granulated rock phosphate is to be applied and herbicide control is proposed in years 0 and 2. The application identifies the predominant soil types underlying the project area as mineral and peat, and the aspect as neutral.

The area is rural and agricultural in nature, with a dispersed settlement pattern. The project area borders agricultural land. According to the biomap submitted with the application, the area covered by the proposal adjoins a watercourse along the southern boundary. A stream to the south and river to the east of the proposal area are separated from the site by agricultural land and public roads, but it appears the watercourse on site would drain into either of these and then flow to the sea, entering via the Valencia Harbour/Portmagee Channel SAC. The proposal area is in the Boola subcatchment.

The proposal area is not within a European site. The closest European site is the Valencia Harbour/Portmagee Channel SAC at a distance of c.0.5km, while also within a 15km radius of the site are the Inveragh Peninsula SPA (c4.8km), Ballinskelligs Bay & Inny Estuary SPA (c5.7km), and Puffin Island SPA (c11km).

The proposal was referred to Inland Fisheries Ireland by DAFM during the processing of the application and a response was received that contained additional conditions. On 02/08/2019 the DAFM 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 that there is no factor that overrides the protection provided by this physical separation and the project was screened out for appropriate assessment. DAFM issued a licence on 26/08/2019 together with standard conditions and some additional environmental and silvicultural conditions including to observe conditions as outlined by Inland Fisheries Ireland.

There is one appeal against the decision to grant the licence. The grounds of appeal contended that based on the information supplied it is not possible to make a decision which would be in compliance with the requirements of the Habitats and EIA Directives and having regard to a listed number of EU Court of Appeal decisions, and there is a lacking of proper assessment, there is no assessment for cumulative effects for example, that 'I am not the person who is paid to do the assessment, reading the Holohan judgement would be a help to you'.

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, the relevant AA procedure was applied at the time (Nov2018), screening for Appropriate Assessment was carried out within 3 km radius of the proposed site, the Appropriate Assessment procedure has changed since the file was approved.

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 4.74 hectares, so is significantly sub-threshold for mandatory environmental impact assessment (EIA), as set in Irish Regulations. The DAFM considered the application across a range of criteria, including water, designated areas, landscape and cumulative effects, and determined that the project was not required to undergo the EIA process.

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 there is no factor that overrides the protection provided by this physical separation, and it deemed that there was no possibility that this project will have a significant effect on any Natura 2000 site due to physical separation and the lack of any ecological pathway, that any safeguards within the project, or any conditions attached to any approval issued, are unrelated to the protection of any Natura 2000 site 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 is a Natura 2000 site within 3km of the proposal area and 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 serious or significant error or a serious of errors 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 the Article 6 of the Habitats Directive before making a new decision in respect of the licence.

Yours sincerely,



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Mr. James Conway (on behalf of the FAC)