



[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 CN83297.

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 CN83297 was granted by the Department of Agriculture, Food and the Marine (DAFM) on 22 August 2019.

Hearing

A hearing of appeal 216/2019 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 CN83297).

The proposal is for afforestation with a species composition of Sitka spruce (85%) & Additional Broadleaves (15%) in two blocks, 0.67 hectares in Tullahennel North and 0.72 hectares in Larha, Co. Kerry. The total proposal area is of 1.39 hectares of enclosed land. Ground preparation would include mounding and the planting method would be slit planting. Herbicide control is proposed in years 0, 1, & 2. The application identifies the predominant soil type underlying the project areas as mineral, the slope is relatively flat to moderate and the existing vegetation type is grass rush.

The area is rural and agricultural in nature, with a dispersed settlement pattern. The project areas are not adjacent to public road, but have access from laneways onto public roads. The proposal areas are at a straight line distance of c1.5km apart, with the Tullahennel North block to the east of the Larha block. The Tullahennel North block adjoins a watercourse along its northern boundary, which flows to the east. An EPA mapped watercourse to the east of this proposal area and on the other side of the public road flows north to join the Lower River Shannon. The Larha block is more northern facing and EPA mapped watercourses to the east and the west of this area flow north to the Lower River Shannon. Both blocks are in the Astee West subcatchment.

The proposal area is not within a European site. The closest European sites are the Lower River Shannon SAC and River Shannon and River Fergus Estuaries SPA which are a distance of c3.1 km from the Tullahennel North proposal area. The proposal areas are also within a 15km radius of the Moanveanlagh Bog SAC and Kerry Head SPA. The Lower River Shannon SAC lies to the north of the proposal area and streams in the vicinity of the proposal area flow into it.

DAFM referred the licence to Kerry County Council for consultation but no response was received. On 13/05/2019 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 due to physical separation and lack of any ecological pathway, the project was screened out for appropriate assessment.

DAFM issued a licence on 22/08/2019 together with largely standard licence conditions and the following additional silvicultural and environmental conditions; Adhere to forestry & landscape guidelines, The broadleaf requirement should be planted in line with local topography and should be mainly birch, Adhere to forestry & water quality guidelines, and 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, and that there is a lacking of proper assessment, that there is no assessment of the cumulative effects for example.

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 relevant Appropriate Assessment (AA) procedure was applied at the time (Nov2018), screening for AA was carried within 3 km radius of the proposed site, and the AA procedure has changed since this 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 1.39 hectares, so is significantly sub-threshold for mandatory environmental impact assessment (EIA), as set in Irish Regulations, and there is evidence on the DAFM file that the DAFM considered the requirement to take into account 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 any 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 before making a new decision in respect of the licence.

Yours sincerely



Mr. James Conway (on behalf of the FAC)