

[REDACTED]

31 December 2020

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 Afforestation approval CN84792.

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 CN84792 was granted by the Department on 21 October, 2019.

Hearing

A hearing of appeal 315/2019 was conducted by the FAC on 7 December, 2020.

FAC Members: Mr. Myles Mac Donnacatha (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 affirm the decision to grant this Afforestation (Reference CN84792).

The proposal is for afforestation of 5.52 hectares with Sitka spruce (85%) and Additional Broadleaves (15%) in Derrygoan, Co Leitrim. Ground preparation would include woody weed removal and mounding and the planting method would be slit planting. Herbicide control is proposed in year 1 and 2. The application identifies the predominant soil type as mineral and the slope is flat to moderate. The project area is crossed by an aquatic zone.

There were no referrals to any other State body in this case. The Forest Service Inspector undertook a desk and field inspection of the site and on 15 October 2019 the inspector carried out an AA screening assessment for each of the three individual Natura 2000 sites within the 15km zone in accordance with the provisions of the Habitats Directive. These are Cuilcagh - Anierin Uplands SAC 000584, Lough Oughter and Associated Loughs SAC 000007 and Lough Oughter Complex SPA 004049. An in-Combination Assessment was carried out on 10/2/2019.

DAFM issued a licence on 21 October 2019 together with the standard licence conditions with additional conditions.

There are two appeals against the decision to grant the licence. The grounds for the first appeal 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

The appellant also asserts that the test for Appropriate Assessment Screening in Irish law is as set out by "Finlay Geoghegan J. in; Kelly -v- An Bord Pleanála [2014] IEHC 400 (25 July 2014).

The grounds for the second appeal contend that

- There are over 30 000 hectares of conifer plantations in County Leitrim and no Environmental Impact Assessment ever undertaken, The appellants have grave concerns in relation to the negative impact the cumulative effect afforestation is having on the social fabric and the environmental wellness of county Leitrim. This development will add to the further destruction of communities, their economic viability and sustainability, Heritage and Culture.
- These lands are rich in biodiversity which should be protected not destroyed at a time when it is accepted by Government that there is a biodiversity crisis.
- It would appear that there has been no consultation with any ecological or conservationary body in relation to this application, even though this project is going to have a detrimental impact on the ecosystems of Lough Awaddy and the protected species of wildlife which feed and breed on the lands in this application.
- They have grave concerns in relation to the use of herbicides in the establishment of this monoculture crop as it poses a serious threat to water quality and the ecosystems of Lough Awaddy.

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. The site was desk assessed and reviewed. The relevant AA procedure at the time was applied. This also included an assessment of forest and non-forest plans/projects in the vicinity of the site which is available on file. DAFM carried out AA Screening for each of the three individual Natura 2000 sites within the 15km zone of consideration on 29 October 2019 and were fully recorded in AA Screening conclusions for each Natura 2000 site. They also stated that the AA procedure has changed since this application was approved. If the current AA procedure was applied it would also be screened out due to the following reasons for each Natura site:

- Cuilcagh - Anierin Uplands SAC – This site is located in an upland area to the north of the proposal and located in excess of 10 km away. This site and its QIs would be screened out based on distance and lack of direct hydrological connectivity.
- Lough Oughter and Associated Loughs SAC – This site would be screened out due to lack of hydrological connectivity.
- Lough Oughter Complex SPA – This site would be screened out due to distance.

They addressed some of the other specific issues the second appellant raised in their appeal. There will be a 10 m setback to all watercourses and broadleaves planted adjoining these setbacks. This will create a long term buffer zone that will protect water quality. Forest cover in this townland is less than 6% and the proposed area is under 6 ha. This falls well short of the threshold required for an EIA. Referral to other bodies or for ecological input was not required as there are no records of protected species in this area.

The FAC had regard to the record of the decision under appeal and the submitted grounds. The site for the proposed afforestation is in a rural area with agriculture being the primary landuse. There are 3 Natura 2000 sites located within 15 km of the proposed afforestation site- Cuilcagh - Anierin Uplands SAC 000584, Lough Oughter and Associated Loughs SAC 000007 and Lough Oughter Complex SPA 004049.

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

An Coiste um Achomhairc
Foraoiseachta
Forestry Appeals Committee

Kilminchy Court,
Portlaoise,
Co Laois
R32 DWT5

Ecn/Telephone 076 106 4413
057 863 1900

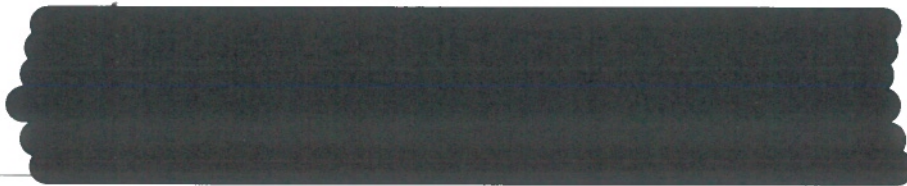
to another type of land use" (Class 1 (d) of Annex II). The Irish Regulations, in relation to forestry licence applications, require the compliance with the EIA process for applications relating to afforestation involving an area of more than 50 hectares, the construction of a forest road of a length 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 5.52 hectares, so is significantly sub-threshold for mandatory environmental impact assessment (EIA), as set in Irish Regulations. The DAFM in their assessment to determine EIA requirement 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 including in-combination effects in relation to the listed Natura 2000 sites and concluded that the proposed project would not have a significant effect on these sites and its Qualifying Interests.

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

A large black rectangular redaction box covering the signature and name of the signatory.

Ms. Claire Kennedy (on behalf of the FAC)

An Coiste um Achonhairc
Foraoiseachta
Forestry Appeals Committee

Kilminchy Court,
Portlaoise,
Co Laois
R32 DWT5

Eon/Telephone 076 106 4418
057 863 1900