



Our Ref: FAC191/2019 CN81603 (please quote on all correspondence)

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15th January 2020

Subject: Appeal in relation to licence CN81603, Rahalisk, Co. Cork

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) in relation to the above licence issued by the Minister for Agriculture, Food and the Marine. 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 all parties to the appeal.

Background

Technical Approval for Afforestation License CN81603 for planting of 17.65 hectares in Rahalisk, Co. Cork was issued on 29th July 2019, with conditions.

Hearing

An oral hearing was conducted by the FAC at the Agriculture Appeals Office, Kilminchy Court, Portlaoise, Co. Laois on 3rd December 2019.

In attendance at the oral hearing:

FAC Members:

Mr. Des Johnson (Chairperson), Mr. Pat Coman, Mr. James Conway & Mr Vincent Upton

Appellant:

Not present

Additional Appellant:

[REDACTED]

Add. Appellant's Representative:

[REDACTED]

Applicant:

Not present

Applicant's Representative:

[REDACTED]

Department Representative:

Mr Kevin Collins, Mr Mark Twomey, Ms. Janet Farrell

Secretary to the FAC:

Ms. Ruth Kinehan



Decision

Having regard to the evidence, written and oral, before it and, in particular, the considerations and reasoning set out below, the FAC has decided to vary the decision of the Minister regarding licence CN81603 as follows:

Broadleaf planting as specified in the proposal should be of native species only and from the DAFM list of approved species; a minimum of three species are to be employed and broadleaf species are to be planted in intimate mixture to enhance visual and habitat diversity.

In relation to the presence of peat soils in plot 509, this site was described by the DAFM Inspector as containing a mixture of peat, peaty-gley and podzol soil types. During the oral hearing, the DAFM Inspectors described the criteria employed in the consideration of the suitability of a site for afforestation in relation to productivity based on a vegetative index. They referred to the document "Land types for afforestation" in this regard, which is published on the DAFM website¹. The land was subject to site inspection by the DAFM District Inspector and with reference to the vegetation, current use, and soil type was considered suitable for afforestation. The mixture of soil types, the enclosed and improved nature of the land, current agricultural use, and potential productivity were discussed during the oral hearing. The FAC has considered the evidence provided to it regarding the criteria employed by the DAFM on land suitability and is satisfied that this area and associated soil is suitable for afforestation.

Concerning the width of broadleaf planting within the site, the DAFM Inspector described this planting as a component of the overall plot and that it is in keeping with grant premium category 3. The DAFM Inspector has designated the number of rows of broadleaf species to be planted on the edges of setbacks facing the dwellings to improve the visual impact of the planting. The FAC is satisfied that the width of broadleaf planting is acceptable in this case.

The DAFM places minimum setbacks in relation to dwellings and roads for all afforestation proposals. Conditions attached to this technical approval for afforestation include a 60 metre setback from dwellings with an additional 10 rows of broadleaf planting. Setbacks from public roads and additional broadleaf planting are also required. It is noted that the plot of concern lies to the north of the Appellant's dwelling. The DAFM Inspector provided a visual representation of the setback and broadleaf planting which was provided to the FAC and all parties. The Additional Appellant provided a number of aerial photographs taken by drone in the week before the oral hearing. The FAC considers that the 60m setback in which no planting will take place coupled with the planting of broadleaf tree species, in addition to the orientation of the forest to the dwelling, will limit the visual impact of the planting. However, in regards the broadleaf species to be planted, the FAC is attaching a requirement to employ native broadleaf species and to ensure that a minimum of

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www.agriculture.gov.ie/media/migration/forestry/grantandpremiumschemes/schemecirculars/2018/LandTypesForAfforestationOct17030118.pdf



three different species planted in intimate mixture are employed to enhance the habitat diversity and visual amenity of the forest.

Regarding the potential impact of the planting on the borehole of adjacent dwellings and sources of drinking water, the FAC notes that the borehole is situated between the dwelling and the land under consideration for afforestation to the south of the public road. The use of pesticides was raised as a specific concern during the oral hearing. While setbacks from boreholes are required under the Forestry Standards Manual, in this situation the borehole and related setback is situated within the larger setback from the dwelling. The use of chemicals during the site preparation was explored during the oral hearing and it was noted that herbicide would be used to control vegetation during initial afforestation, in addition to manual, non-herbicide methods. According to the Applicant's Representative this would be undertaken in a targeted manner using a knapsack sprayer to control vegetation and no other use of pesticides was considered necessary for this planting. No issues had been identified to the FAC regarding water quality and the current agricultural use of this land. Considering the depth of the borehole, its location regarding the proposed planting, the extent of setback and planting of additional broadleaves, and the limited and controlled use of herbicides, the FAC does not consider that this planting represents a threat to the water quality of the identified boreholes.

Having regard to the nature of the proposed afforestation and its proximity to a Special Protection Area (Code No. 004162) it is considered that the potential for significant effects cannot be discounted at Stage 1 and that a Stage 2 appropriate assessment is required.

The documents on file include a Natura Impact Statement (NIS) prepared by McCarthy Kelville O'Sullivan Ltd., Planning and Environmental Consultants, submitted following a request from the DAFM resulting from a screening undertaken by a DAFM Inspector and DAFM Ecologist. This includes information gathered through a baseline ecological survey undertaken in March 2017 and a hen harrier habitat assessment undertaken in April 2019.

As all of the SACs identified within 15km are in separate hydrological sub-catchments to the proposed afforestation site, and with no pathways identified, the FAC concludes that there is no likelihood of significant effects on the integrity of any of these sites having regard to their conservation objectives. The Geragh SPA is 9.4km distance from the proposed afforestation site and located in a separate hydrological sub-catchment. Its qualifying interests are listed as Wigeon, Teal, Mallard, Coot and wetland and waterbirds. Given the separation distance and the lack of supporting habitat for any of these species on the proposed afforestation site the FAC concludes that there is no likelihood of significant effects on the integrity of this SPA. The Mullaghanish to Musheramore Mountains SPA is 0.5km from the proposed afforestation site and its qualifying interest is the Hen Harrier².

² The Hen Harrier (*Circus cyaneus*) is a protected raptor, listed in Annex I of the EU Birds Directive.



For European sites outside the 15km radius, no pathway for effects was identified and the FAC concludes based on the nature and scale of the proposed afforestation and the distance of separation to sites outside the 15km radius there is no likelihood of significant effects arising.

The submitted NIS addresses all of the above identified Natura 2000 sites but is primarily focused on the Mullaghanish to Musheramore Mountains SPA and its conservation objective. It is stated to be informed by a desk study and field surveys undertaken in 2017 and 2019 by listed, qualified personnel. The desk study references *Bird Atlas 2007: The breeding and wintering birds of Britain and Ireland*, *NPWS data*, *Hen Harrier SPA Habitat Mapping Project 2014*, *2015 National Survey of Breeding Hen Harriers*, and *Hen Harrier Project data*. The FAC concludes that this research provides relevant objective, scientific information on which to base an assessment. The NPWS data provides the following information:

Year	1 – 3km from site boundary	3 – 5km from site boundary
2015	No records	1 confirmed breeding site
2010	2 possible breeding sites	2 confirmed breeding sites & 2 additional sightings
2005	10 sightings	3 confirmed breeding sites; 29 additional sightings
1999	1 confirmed breeding site	4 confirmed and 1 possible breeding site
1998	1 confirmed breeding site	

The NPWS SPA site synopsis is as follows:

"The mix of forestry and open areas provides optimum habitat conditions for this rare bird, which is listed on Annex I of the E.U. Birds Directive. The early stages of new and second-rotation conifer plantations are the most frequently used nesting sites, though some pairs may still nest in tall heather of unplanted bogs and heath. Hen Harriers will forage up to c. 5 km from the nest site, utilising open bog and moorland, young conifer plantations and hill farmland that is not too rank. Birds will often forage in openings and gaps within forests. In Ireland, small birds and small mammals appear to be the most frequently taken prey".

Based on the information provided it is possible that the proposed afforestation site lies within the foraging range of breeding Hen Harriers (as identified in 2015) but likely outside the core foraging range.

The proposed afforestation is not directly connected with or necessary to the management of the SPA. The proposed afforestation is on two parcels of land. The eastern parcel is wet grassland and the western parcel has a small area of degraded wet heath but is dominated by purple moor-grass and sweet vernal-grass. A Hen Harrier Habitat Suitability Assessment carried out in 2019 by qualified personnel concluded that the two proposed parcels of land for afforestation did not contain suitable nesting habitat, while wet grassland can provide suitable foraging habitat for the Hen Harrier. The



2019 assessment concluded that the proposed afforestation site is 0.5km from the SPA boundary but does not have connectivity with areas of potential foraging habitat within the SPA. This is because of intervening mature forests. As noted above, the NIS also provides information from the NPWS that states that no nesting sites are within 3km from the proposed afforestation. Information concerning other developments in the area are presented in the NIS and it is concluded that no Natura 2000 sites were considered to be at risk from cumulative effects. The Additional Appellant stated that there had been regular sightings of the Hen Harrier foraging on the proposed afforestation sites and their representative identified areas in the drone imagery that they considered suitable Hen Harrier habitat in the locality. While accepting the Appellants' observations, the FAC concludes that the best scientific knowledge in this respect is provided in the NIS.

Based on the information provided with the application, the Natura Impact Study submitted by way of further information, the assessment by DAFM, the appeal submission and information supplied by the Parties at the Oral Hearing, the FAC concludes that, based on the best available scientific knowledge, the proposed afforestation either individually or in combination with other projects in the area would not undermine the conservation objective or adversely affect the integrity of the adjacent SPA (Code No. 004162) or any other Natura 2000 sites.

The licence under appeal relates to proposed afforestation of 17.65ha on lands currently in rough grazing. The proposed project, which adjoins and is adjacent to mature forests (and not initial afforestation for the purposes of conversion to another type of land use), is sub-threshold in relation to mandatory EIA. However, a preliminary examination of the

Information was submitted at the Oral Hearing in respect of the presence of freshwater pearl mussels (*Margaritifera margaritifera*) in the River Laney approximately 3km to the south of the proposed afforestation, outside of a designated Natura 2000 site. Tributaries of the River Laney, notably the Glasreagh river, pass adjacent to the proposed afforestation lands and an existing channel runs through plot 509 before joining these tributaries. There is no convincing evidence presented to indicate that existing land uses and/or activities in the area are impacting on water quality or that the proposed afforestation, combined with these existing land uses, including forests, would have a detrimental impact on it. The proposal excludes areas alongside the aquatic zone from planting, machinery, drainage, and the use of fertilisers and herbicides. The technical approval from the DAFM includes the planting to incorporate broadleaf species alongside a 15 metre setback area. The removal of existing livestock, in itself, may result in a reduction in potential pollutants to water and the atmosphere. Freshwater pearl mussels can also be impacted by the acidification of waterways. However, the DAFM protocol, agreed with the EPA, does not classify this specific area as sensitive to acidification. Having regard to the nature, size and location of the proposed afforestation and the evidence provided to it, the FAC considers that there is no real likelihood of the proposed afforestation, either by itself, or in combination with existing land uses and developments in the area, having a detrimental impact on the River Laney freshwater pearl mussel population.



Overall, having regard to the size, nature and location of the proposed afforestation scheme, and to the characteristics of the proposed sites for planting, which are relatively flat and dominated by wet grassland, surrounding land uses characterised by agriculture, forests and low density residential development, it is considered that there is no likelihood of significant effects on the environment arising by the proposed afforestation itself, or in combination with other existing developments in the area. In coming to this conclusion, it is considered that there will be a visual impact which will increase as the trees mature and the land use will change but these impacts are not considered significant. There is no evidence that water quality in water courses will be impacted either on the site or in the wider surrounding area. Having regard to the distance of the site from identified areas of fresh water pearl mussels, the nature, design and scale of the proposal, in combination with the soil type, typography and geology of the site, there would be no impact arising from the afforestation. There is no evidence that the existing forests in the area has impacted negatively on water quality as monitored and documented by the EPA; the FAC notes the high status of water quality in the River Laney. Information presented by qualified ecologists in a Natura Impact Statement indicates that there will be no significant impact on the hen harrier or the integrity of the adjacent SPA. There will be a beneficial impact in terms of carbon sequestration as the trees mature and the planting of corridors of broadleaf trees will enhance the habitat diversity and amenity of the area. The FAC notes that this application is in line with general government policies and programmes to increase forest cover³.

The grounds of appeal also included a concern regarding the possible damage inflicted on the local road network by drainage and future felling. Past tree-felling in the area and the damage caused by heavy machinery were noted in the grounds of appeal. The FAC notes that the application was referred to the County Council and no objection was received and, in addition, that the approval under appeal relates to afforestation and that a separate licence will be required if the trees are felled in the future. The FAC notes that the proposal does not include any direct drainage to water courses and is satisfied that this mitigates against a substantial increase in the flood risk resulting from this planting. The FAC has no remit regarding the maintenance of the public road network, which falls primarily to the local authorities.

Additional information regarding the assessments undertaken by the FAC before making this decision is included as an Appendix to this letter.

Yours sincerely

Vincent Upton, on behalf of the Forestry Appeals Committee

³ For example the Forestry Programme 2014-2020 (www.agriculture.gov.ie/media/migration/forestry/forestryprogramme2014-2020/IRELANDForestryProgramme20142020230215.pdf) and the Climate Action Plan to Tackle Climate Breakdown (www.dccae.gov.ie/en-ie/climate-action/topics/climate-action-plan/Pages/climate-action.aspx)



Appendix

Prior to making its decision in this case the FAC carried out an assessment under the provisions of Article 6(3) the Habitats Directive. The FAC also concluded that mandatory EIA is not required. These assessments are based on the information available to the FAC from the Department of Agriculture, Food and the Marine, provided at the oral hearing and from information in the public domain. In addressing the grounds of appeal in this case the outcome of this assessment and the reasoning for the EIA conclusion are detailed in the decision to confirm the granting of the licence.

EIA Preliminary examination

The licence under appeal relates to proposed afforestation of 17.65ha on lands currently in rough grazing. The 2011 EIA Directive (2011/92/EU), as amended by the 2014 EIA Directive (2014/52/EU), lists, in Annex II under 1(d), *initial afforestation and deforestation for the purposes of conversion to another type of land use*. The provisions of the Directive are transposed into Irish forestry legislation by SI No.191 of 2017, which sets a threshold for mandatory EIA as follows: *afforestation which would involve an area of 50ha or more*. The proposed project, which adjoins and is adjacent to mature forests (not initial afforestation), is clearly sub-threshold for the purposes of the Directive and, as such, does not require mandatory EIA. Given the location of the proposed afforestation and the extent of existing mature and maturing forests in the area, the FAC considered that, in applying the precautionary principle, it should scope the proposal to determine if EIA is required. The FAC considered that the information available to it in relation to the description of the proposal and the characteristics of the receiving environment was adequate for this purpose.

Having regard to the size, nature and design of the proposed afforestation scheme, and to the characteristics of the proposed sites for planting which are relatively flat and dominated by wet grassland and rushes, surrounding land uses characterised by agriculture, forests and low density residential development, it is considered that there is no likelihood of significant effects on the environment arising by the proposed afforestation itself, or in combination with other existing developments (including mature and maturing forests) in the area. In coming to this conclusion, the FAC considers that there will be a cumulative visual impact arising from existing forestry and the proposed afforestation which will increase as the trees mature, and the land use will change, but these impacts, while at least medium to long term, are not considered significant or detrimental to the environment. There is no evidence that the existing forests or other land uses in the area have impacted negatively on water quality as monitored and documented by the EPA at local monitoring stations⁴ or that it will be impacted either on the site or in the wider surrounding area arising from the proposed afforestation in terms of acidification, eutrophication, siltation or otherwise.

Information was submitted at the Oral Hearing in respect of the existence of freshwater pearl mussels in the River Laney approximately 3km to the south of the proposed afforestation.

⁴ Monitoring stations and related water quality data access in December 2019 through the EPA website <http://gis.epa.ie/GetData/Download> and <https://gis.epa.ie/EPAMaps/default>



Tributaries of the River Laney, notably the Glasreagh River and an existing channel runs through Plot 509 before joining these tributaries. There is a sewage discharge into the River Laney approximately 4.3km upstream of the mussels' site. There is no convincing evidence presented to indicate that existing land uses and/or activities in the area are impacting on the freshwater pearl mussels or that the proposed afforestation, combined with these existing land uses, would have a detrimental impact on them. Having regard to the nature, size and layout of the proposed afforestation, the FAC considers that there is no likelihood of the proposed afforestation, either by itself or in combination with existing land uses and developments in the area, would result in the deterioration or destruction of breeding grounds or resting places, or otherwise have a detrimental impact on the River Laney pearl mussels.

Information presented by qualified ecologists in the Natura Impact Statement, indicates that there will be no significant impact on the hen harrier or the integrity of the adjacent SPA and the FAC agrees with this conclusion. There will be a beneficial impact in terms of carbon sequestration as the trees mature and the planting of corridors of broadleaf trees will enhance the amenity of the area.

Appropriate Assessment

Having regard to the nature of the proposed afforestation and its proximity to a Special Protection Area (Code No. 004162) it is considered that the possibility for significant effects cannot be discounted and that a Stage 2 appropriate assessment is required.

The documents on file include a Natura Impact Statement prepared by McCarthy Kelville O'Sullivan Ltd., Planning and Environmental Consultants. This includes information gathered through a baseline ecological survey undertaken in March 2017 and a hen harrier habitat assessment undertaken in April 2019.

The NIS identifies the following Natura 2000 sites within a 15km radius of the proposed afforestation site:

- Blackwater River SAC (7.4km distance)
- Killarney National Park, Macgillycuddy's Reeks & Caragh River Catchment SAC (12.1km distance)
- Mullaghanish Bog SAC (11.3km distance)
- St. Gognet's Wood SAC (13.7km distance)
- The Geragh SAC (9.4km distance)
- The Geragh SPA (9.6km distance)
- Mullaghanish to Musheramore Mountains SPA (0.5km distance)

As all of the SACs are in separate hydrological sub-catchments to the proposed afforestation site, with significant separation and with no connecting pathways identified, the FAC concludes that there is no likelihood of significant effects on the integrity of any of these sites having regard to their



conservation objectives (as detailed on the NPWS website). Consideration was also given to European sites outside the 15km radius, however, no pathway for effects was identified and the FAC concludes, based on the nature, design and scale of the proposed afforestation and the distance of separation to sites outside the 15km radius, coupled with the lack of identified pathways, there is no likelihood of significant effects arising.

The Geragh SPA is 9.4km distance from the proposed afforestation site and located in a separate hydrological sub-catchment. Its qualifying interests are listed as Wigeon, Teal, Mallard, Coot and wetland and waterbirds. Given the separation distance and the lack of supporting habitat for any of these species on the proposed afforestation site, the FAC concludes that there is no likelihood of significant effects on the integrity of this SPA. The Mullaghanish to Musheramore Mountains SPA is 0.5km from the proposed afforestation site and its qualifying interest is the Hen Harrier. The Hen Harrier is an Annex 1 species as listed in the Habitats Directive.

The NIS submitted addresses all of the identified Natura 2000 sites but is primarily focused on the Mullaghanish to Musheramore Mountains SPA and its conservation objective. It is stated to be informed by a desk study and field surveys undertaken in 2017 and 2019 by listed, qualified personnel. The desk study references *Bird Atlas 2007: The breeding and wintering birds of Britain and Ireland*, NPWS data, *Hen Harrier SPA Habitat Mapping Project 2014*, *2015 National Survey of Breeding Hen Harriers*, and *Hen Harrier Project data*. The FAC concludes that this research provides relevant objective, scientific information on which to base an assessment. The NPWS data provides the following information:

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Based on the information provided it is possible that the proposed afforestation site lies within the foraging range of breeding Hen Harriers (as identified in 2015) but it is likely outside the core foraging range.

The proposed afforestation is not directly connected with or necessary to the management of the SPA. The proposed afforestation is on two parcels of land. The eastern parcel is Wet Grassland and the western parcel has a small area of degraded wet heath but is dominated by purple moor-grass and sweet vernal-grass. A Hen Harrier Habitat Suitability Assessment carried out in 2019 by qualified personnel concluded that the two proposed parcels of land for afforestation did not contain suitable nesting habitat, while wet grassland can provide suitable foraging habitat for the Hen Harrier. The 2019 assessment concluded that the proposed afforestation site is 0.5km from the SPA boundary but does not have connectivity with areas of potential foraging habitat within the SPA. This is because of intervening mature forestry. The Appellants' stated that there had been regular sightings of the Hen Harrier foraging on the proposed afforestation sites. While accepting the appellants observations on sightings, the FAC concludes that the best scientific knowledge is provided in the NIS.

Based on the information provided with the application, the Natura Impact Study submitted by way of Further Information, the assessment by DAFM, the appeal submission and information supplied by the Parties at the Oral Hearing, the FAC concludes that, based on the best scientific knowledge, the proposed afforestation either individually or in combination with other projects in the area, including mature and maturing forests, would not undermine the conservation objective or adversely affect the integrity of the adjacent SPA (Code No. 004162) for which the Hen Harrier is the special conservation interest.