



Our ref: FAC 277/2019 CN83386

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15th January 2020

Subject: Appeal in relation to licence CN83386, Drummullig, Co. Cavan

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 CN83386 for planting of 7.31 hectares in Drummullig, Co. Cavan was issued on 1st October 2019, with conditions.

Hearing

An oral hearing was conducted by the FAC at the Agriculture Appeals Office, Kilminchy Court, Portlaoise, Co. Laois on 11th December 2019.

In attendance at the oral hearing:

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

Department Representative: Mr. Kevin Collins, Mr. Jhan Crane, Mr. Seppi Honna

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 cancel the decision of the Minister regarding licence CN83386.

An Coiste um Achomhairc
Foraoiseachta
Forestry Appeals Committee

Kilminchy Court,
Portlaoise,
Co Laois
R32 DWT5

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Prior to making this decision the FAC undertook a preliminary examination of this proposal in relation to environmental impact assessment and undertook a appropriate assessment screening of the possibility of significant effects on Natura 2000 sites. The determinations of these assessments are below and available on the public file.

The FAC carried out an examination of the information submitted with the application and supplementary information submitted to the FAC in the course of the appeal process, including the Oral Hearing. The proposed afforestation is sub-threshold for the purposes of EIA. The proposal is not connected to any other forests and no approvals have been granted for planting in the adjoining land. The site is comprised of 7.31 ha of relatively steep agricultural land at an elevation of 59-64 m on mineral soil and is currently used for animal production. The western portion is steeper and composed of a number of smaller fields with hedgerows and the eastern part is composed of large agricultural fields, which is bordered by a public road. Site cultivation will be undertaken by ripping, employing a tractor, described at the Oral Hearing as a low impact and cost-efficient method suitable for better quality agricultural land on mineral soil. Fertiliser will be employed once at a rate of 250kg per hectare of Granulated Rock Phosphate, a slow release fertiliser. Planting will comprise of 85% Sitka spruce and 15% broadleaf species and will be undertaken by hand and herbicide will be employed in the first two years to control vegetation. The area will be fenced to exclude stock. The proposal states that hedgerows and mature trees will be maintained on site and that planting will not take place within 5 metres of hedgerows. In addition, no planting is proposed within 10 metres of the public road.

Having regard to the nature, scale, location and design of the proposed afforestation, the nature and extent of existing forestry in the area and to the characteristic land uses in the surrounding environment which is predominantly agricultural and with a dispersed settlement pattern, the FAC concludes that the proposed afforestation either by itself, or in combination with other projects and land uses in the area, would not give rise to any real likelihood of significant effects on the environment. However, the FAC considers that there is a lack of information available to it regarding the qualifying interests of the Lough Oughter SPA as detailed below.

The FAC is not satisfied that a satisfactory screening assessment, in accordance with the provisions of Article 6(3) of the Habitats Directive, was carried out by the competent authority (DAFM). Two Natura 2000 sites were identified within 15km of the proposed afforestation. The FAC notes that consideration was given to Natura 2000 sites outside of this identified zone of influence. The FAC is satisfied that the screening assessment was carried out without reference to any measures designed to mitigate possible effects on any Natura 2000 sites. Details are provided in respect of developments and forestry and non-forestry related projects in the surrounding area in respect of an examination of potential cumulative effects.

The Lough Oughter and Associated Loughs SAC (000007) is a large network of waterways, islands, small lakes and peninsulas including some 90 inter-drumlin lakes and 14 basins. The portion of river on the eastern edge of the SAC lies within 100m to the east, west and the southern tip of the



proposed afforestation. A small section of the field boundary of the proposal to the north intersects with the SAC boundary, although no planting will take place. The qualifying interests of this SAC are

- Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation [3150]
- Bog woodland [91D0]
- *Lutra lutra* (Otter) [1355]

The Natura 2000 Standard Data Form¹ lists artificial planting on open ground (non-native trees) (Code B01.02) outside the site as medium ranked of the impacts and activities with high effect on the site, both negative and positive.

The Site Synopsis² notes that

Increased afforestation has resulted in some loss of wetland habitat and also loss of feeding ground for wintering birds such as Greenland White-fronted Goose.

The Forest Service, DAFM Forestry and Otter Guidelines (2009) suggest that dense scrub (whether in open fields or within woodland) within 50 metres of a watercourse could be suitable habitat for otter and that operations within 50 metres of a watercourse where otter are present could have a disturbance effect. No information was provided to the FAC regarding the presence or absence of data on otter populations in this area. Only the northern tip of the area contains a small area of scrub/hedgerow within 50 meters and the waterway. During the Oral hearing it was clarified that this area will not be planted as it falls within the setbacks from the public road and hedgerows and is required for amenity reasons. Destruction of otter habitat is therefore not considered a risk in this proposal.

The eastern edge of the complex that makes up Lough Oughter SPA lies to the south-west of the southern tip of the proposed afforestation. The conservation objectives of this SPA are to maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA:

- Great Crested Grebe (*Podiceps cristatus*) [A005]
- Whooper Swan (*Cygnus cygnus*) [A038]
- Wigeon (*Anas penelope*) [A050]

And

- To maintain or restore the favourable conservation condition of the wetland habitat at Lough Oughter Complex SPA as a resource for the regularly-occurring migratory waterbirds that utilise it.

On the Natura 2000³ form under threats, pressures and activities with impacts on the site "Silviculture, forestry" (Code B) outside of the site is assigned a medium rank.

¹ www.npws.ie/sites/default/files/protected-sites/natura2000/NF000007.pdf

² www.npws.ie/sites/default/files/protected-sites/synopsis/SY000007.pdf



The site synopsis⁴ includes the following:

The Lough Oughter Complex is of importance for a range of wintering waterfowl. Of particular note is an internationally important population of Whooper Swan (318) that is based in the area and which uses the lakes as a roost - all figures are five year mean peaks for the period 1995/96 to 1999/2000. A population of Greenland White-fronted Goose (75) of regional importance also roosts on the lakes and feeds mainly on agriculturally improved grassland nearby.

The screening report and information provided at the oral hearing noted the unsuitability of the proposed planting area for the Great Crested Grebe, Whooper Swan and Wigeon. As the proposal will take place on improved agricultural land it cannot be discounted that the available foraging area of regularly-occurring migratory waterbirds will be reduced.

The FAC was provided with correspondence from the forester who will manage the site that described proposal will be managed to mitigate negative impacts on the environment. This letter was sent to the administration section of the DAFM and not forwarded to the DAFM District Inspector that undertook the assessment of the proposal. This issue was discussed in the Oral Hearing and the FAC is satisfied that the screening assessment of the proposal did not take account of mitigation measures designed to protect a Natura site or its qualifying interest.

The FAC notes that the application details were referred to the NPWS and, in response, no objections were raised.

The FAC considers it possible that this proposal results in minor noise disturbance to otters, if present, for a limited period of time but that this potential impact would not undermine the conservation objectives of the Lough Oughter and Associated Loughs SAC or be considered as a significant effect on the SAC.

The FAC is not satisfied, based on the information before it, that the proposed afforestation by itself or in combination with other plans and projects would not have a significant effect on Lough Oughter Complex SPA (Code: 004049) having regard to the conservation objectives set for that site. The proposed site is in close proximity to this European site and supports habitat favourable for the grazing or foraging of wetland birds, notably the Greenland White Fronted Goose, and to which there are conservation objectives to maintain and restore favourable conservation conditions for the bird species and the wetland habitat. In the absence of relevant information regarding the extent to which wetland birds and, in particular, the Greenland White Fronted Goose, utilise the habitat on the site, the FAC, in applying the Precautionary Principle, considered that the possibility for significant effects could not be discounted and that the licence should be cancelled.

³ www.npws.ie/sites/default/files/protected-sites/natura2000/NF000007.pdf

⁴ www.npws.ie/sites/default/files/protected-sites/synopsis/SY004049.pdf



**An Coiste um Achomhairc
Foraoiseachta**

Forestry Appeals Committee

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Des Johnson', written over a horizontal line.

Des Johnson, on behalf of the Forestry Appeals Committee

