



01 July 2020

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**Subject:** Appeal 085/2019 regarding licence CN83423

Dear [REDACTED]

I refer to the 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**

Licence CN83423 for the afforestation of 3.23ha at Tullyrahan, Co Monaghan was issued by the Department of Agriculture, Food and the Marine (DAFM) on 17 April 2019.

#### **Hearing**

A hearing of appeal 085/2019 was held by the FAC on 16 June 2020.

FAC Members: Mr. Des Johnson (Chairperson), Mr. Jim Byrne, Mr. Pat Coman, Mr. Vincent Upton

#### **Decision**

The Forestry Appeals Committee (FAC) 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 vary the DAFM decision in respect of licence (Reference CN83423) to include the following condition;

- ***A 10m aquatic zone setback of unplanted, retained vegetation positioned between the marked aquatic zone and the forest crop and associated operations, as measured from the nearest bank of the aquatic zone, shall be included.***

The proposal is for afforestation of 3.23ha across 3 plots and planting is to be with Norway spruce and Alder. The proposal site adjoins a previous plantation of modest size (c. 4ha), comprises good agricultural land cropped in grass. Soils are described as mineral, the site is unexposed and relatively level with elevations of 100m to 110m. Ground preparation is by mounding and slit planting is planned, no fertiliser is planned and no drainage is required, herbicide usage is planned for years 1, 2 and 3. Immediately south of the application area is a minor quarry area by the public road, and there is a small quarry area immediately across this cul de sac public road. The site has public road access. An EPA marked watercourse runs south to north along the proposal's eastern boundary and flows to Muckno Lough. The proposal site is in the Newry, Fane, Glyde and Dee catchment and the Fane sub-catchment and is close to the Northern

Ireland border. There were referrals to An Taisce and Monaghan County Council and no replies were received.

The licence was issued with the following conditions; (1) *Adhere with environmental guidelines for afforestation, and (2) All guidelines to apply.* The FAC considers neither of these conditions are mitigation measures regards the proposal in respect of any European site.

There is one appeal against the licence and the grounds include that based on the information supplied it was not possible to make a decision which was in compliance with the requirements of the habitats and EIA directives, and having regard to the following judgments of the CJEU; Case C-258/11, Case C-164/17, Case C-323/17 and Case C-461/17.

The response to the appeal by DAFM included that the proposed afforestation area was subject to the Appropriate Assessment Screening procedure applicable at November 2019, no other proposed afforestation or felling projects were noted within the vicinity of CN83423, and non-forestry projects within the vicinity of CN83423 include; New slatted sheds (1662, 16249), new dwelling (16283). DAFM stated it concluded that the proposed afforestation will have no significant effect, either alone or in combination with other projects in the vicinity, to any Natura 2000 area.

The FAC found there is one European Site within a 15km radius of the proposal, Slieve Gullion SAC at 13.5 km, where the qualifying interests are dry heaths. Other Natura sites exist beyond 15km and the FAC has examined for Dundalk Bay SAC and Dundalk Bay SPA which have a hydrological connection from the proposal site but at distance in excess of 37 km. The FAC undertook an appropriate assessment screening under 6(3) of the Habitats Directive 92/43/EEC and the screening report is available on the public file.

The watercourse along the boundary of the proposal site flows over 4.3km to a large lake (Muckno Lough) joining with the Fane River and then to a smaller lake (Ross Lough) on its path to the Dundalk Bay Natura sites. At this distance and considering the nature and extent of the proposal on mineral soils and the hydrological pathway involved there is no likelihood of a significant effect on the SAC or the SPA or the qualifying interests of those European sites. In respect of Slieve Gullion SAC and its interests, there is no connection or pathway for an effect on this large SAC from the proposal and there is no likelihood of a significant effect on the SAC or its qualifying interests.

The FAC noted small quarried areas adjacent to the proposal to its south and that the watercourse on the proposal site is along its eastern boundary, furthest from the quarry boundary. There is no evidence that the quarry is currently active and were it so there is no basis for a significant effect on the European sites when considered in-combination with the proposal. Castleblaney town is approximately 4.2 km west of the proposal and in addition to distance is fully separated from the proposal by Muckno Lough. There are approximately 7ha of established forestry adjacent to the and a 290m forest road project is in place since February 2019 and due to location, distances and scale would not combine with the proposal. Also regards non-forestry plans and projects there are planning permissions granted for two slatted sheds and a dwelling with ancillaries, these projects are self-contained and would not combine with the proposal. The



proposal when considered in-combination with these other plans and projects poses no likelihood of a significant effect on a European site. The FAC concluded that there is no likelihood of significant effects on a European site from the proposal on its own or in combination with other plans and projects, that the proposal can be screened out and an Appropriate Assessment is not required.

The Environmental Requirements for Afforestation (December 2016) require a 10m set-back from aquatic zones, the DAFM provided documents in this instance indicate a 5m set-back is applied. The FAC is satisfied there is a permanent watercourse along the eastern boundary of the proposal that is marked on the 6" Ordinance Survey maps and a 10m set back is required where slope is moderate (<15%) and no peat soils are involved, this is as per table 5 of the Environmental Requirements.

Annex II of the EIA Directive 2011/92/EU, as amended by Directive 2014/52/EU, lists classes of development for which Member States may set thresholds or criteria for requiring EIA. This includes initial afforestation or deforestation for the purpose of conversion to another type of land use and road construction. This is transposed into Irish Regulations (Irish Forestry Regulations 2017) as afforestation involving an area of more than 50ha. The Regulations also provide for the Minister to consider if sub-threshold developments are likely to have significant effects on the environment and, as such require EIA. The proposed development at 3.23ha is significantly sub-threshold regards a mandatory EIA.

This is a rural agricultural area. There are no freshwater pearl mussel populations or any Natura 2000 sites likely to be adversely affected. There would be no significant effects on biodiversity. The area is not sensitive to fisheries and there are no archaeological sites or features on the project lands or adjoining. Both Muckno Lake and Drumakill lake are listed as pNHAs on the Monaghan County Development Plan 2019-2023. Drumakill lake, also named Clare Lough, is c. 600m south west of the proposal and has no mapped hydrological connection and the wetlands habitats are not at any risk of a significant effect from the proposal. Muckno lake, the largest lake in County Monaghan, is also a water supply for Dundalk town. However, the FAC is satisfied the extent of the proposal combined with standard conditions, including the required aquatic setback, does not pose a risk of significant environmental effects on Muckno Lough.

Having regard to the nature and scale of the proposed development and of other projects in the area, the FAC concluded that the proposed development alone or cumulatively with other projects and land uses would not be likely to give rise to significant effects on the environment.

The FAC is satisfied the proposal is in keeping with Government policy and with good forestry practice.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Pat Coman', is written over a horizontal line.

Pat Coman on Behalf of the Forestry Appeals Committee



## **CN83423 (Appeal 085/19) Appropriate Assessment Screening and Preliminary Examination for EIA**

### ***Background***

The proposal is for afforestation of 3.23ha at Tullyrahan Co Monaghan, licence issued 17 April 2019, and site is in 3 plots for planting with Norway spruce and Alder. The proposal site adjoins a previous plantation of modest size (4ha approx), is good agricultural land cropped in grass. Soils are described as mineral, the site is unexposed and relatively level with elevations of 100m to 110m. Ground preparation is by mounding and slit planting is planned, no fertiliser is planned and no drainage is required, herbicide is planned for years 1, 2 and 3. Immediately south of the application area is a minor quarry area by the public road, and there is a small quarry area immediately across the cul de sac public road from this. The site has public road access. An EPA marked watercourse runs south to north along the proposal's eastern boundary and flows to Muckno Lough. The proposal site is in the Newry, Fane, Glyde and Dee catchment and the Fane sub-catchment and is close to the Northern Ireland border. There were referrals to An Taisce and Monaghan County Council and no replies were received. Slieve Gullion SAC does not appear in the DAFM screening.

***Licence conditions;*** Adhere with environmental guidelines for afforestation; All guidelines to apply.

### **Appropriate Assessment Screening**

#### ***European Sites;***

Site	Distance	Qualifying Interests
Slieve Gullion SAC	13582	N Ireland 640 ha site – <b>Habitats;</b> European dry heaths
Dundalk Bay SAC	22163.90	<b>Habitats;</b> Estuaries / Mudflats and sandflats not covered by seawater at low tide / Perennial vegetation of stony banks / Salicornia and other annuals colonising mud and sand / Atlantic salt meadows / Mediterranean salt meadows
Dundalk Bay SPA	20891.74	<b>Birds;</b> Knot. Black-headed Gull / Black-tailed Godwit / Grey Plover / Common Gull / Ringed Plover / Light-bellied Brent Goose / Herring Gull / Mallard / Oystercatcher / Teal / Redshank / Lapwing / Golden Plover / Red-breasted Merganser / Pintail / Shelduck / Common Scoter / Curlew / Bar-tailed Godwit / Dunlin / Greylag Goose / Great Crested Grebe <b>Habitats;</b> Wetlands

Only one European site occurs within a 15 km distance of the proposal, Slieve Gullion SAC at 13.5 km, where the qualifying interests are dry heaths. Other Natura sites exist beyond 15km and the FAC has examined for Dundalk Bay SAC and Dundalk Bay SPA which have a hydrological connection from the proposal site but at a distance in excess of 37 km. The watercourse along the boundary of the proposal site flows over 4.3km to a large lake (Muckno Lough) joining with the Fane River and then to a smaller lake (Ross Lough) on its path to the Natura sites. At this distance and considering the nature and extent of the proposal on mineral soils and the hydrological pathway involved there is no likelihood of a significant effect on the SAC or the SPA or the qualifying interests of these European sites. In respect of Slieve Gullion SAC and its interests, there is no connection or pathway for an



effect on this large SAC from the proposal and there is no likelihood of a significant effect on the SAC or its qualifying interests.

#### ***In combination***

There is a small quarried area adjacent to the proposal to its south and another similar but larger area across the public road from the proposal. The watercourse on the proposal site is along its eastern boundary – furthest from the quarry boundary - and does not connect with this small quarry. There is no evidence that the quarry is currently active and were it so there is no basis for a significant effect on the European sites when considered in-combination with the proposal. This is a reasonably flat site and surrounds that comprise mainly of farmland. Castleblaney town is approximately 4.2 km straight line to the west but is in addition to distance fully separated from the proposal by Muckno Lough. There are approximately 7ha of established forestry adjacent to the proposal - DAFM have identified no other forestry or felling notices in the vicinity. A forest road project CN82535 is in place since February 2019 at Tullyrahan consisting of 290m. Also regards non-forestry there are planning permissions granted for two slatted sheds and a dwelling with ancillaries. None of these plans and projects gives rise to the applied on project creating a likely significant effect on a European site when considered in combination.

#### ***Conclusion***

There is no likelihood of significant effects on a European site from the proposal on its own or in combination with other plans and projects. The proposal can be screened out and an Appropriate Assessment is not required.

#### ***Preliminary Examination for EIA***

Annex II of the EIA Directive 2011/92/EU, as amended by Directive 2014/52/EU, lists classes of development for which Member States may set thresholds or criteria for requiring EIA. This includes initial afforestation or deforestation for the purpose of conversion to another type of land use and road construction. This is transposed into Irish Regulations (Irish Forestry Regulations 2017) as afforestation involving an area of more than 50ha or forest road construction of greater than 2000m. The Regulations also provide for the Minister to consider if sub-threshold developments are likely to have significant effects on the environment and, as such require EIA. The proposed development at 3.23ha is significantly sub-threshold regards a mandatory EIA.

There is adequate information before the FAC in respect of the characteristics of the proposal, the location, and types and characteristics of potential impacts in order to determine if the proposed development, alone or cumulatively with other projects and land uses, would be likely to have significant effects on the environment. This is a rural agricultural area. There are no freshwater pearl mussel populations or any Natura 2000 sites likely to be adversely affected. There would be no significant effects on biodiversity. The area is not sensitive to fisheries and there are no archaeological sites or features on the project lands or adjoining. The DAFM certification identifies the site as being in a high sensitive landscape and within a 3km buffer of an area of primary amenity, and on this point the records show there was referral made by DAFM to Monaghan County Council on 08 March 2019 and no reply was received. Application form 1 also identified that the site is within 3km upstream of pNHA Drumakill Lough 001600 and pNHA Muckno Lough 00563. Both Muckno Lake and Drumakill lake are listed as pNHAs on the Monaghan County Development Plan 2019-2023 as follows; Drumakill lake is a small lake, located 5 km east of Castleblaney and approximately 1 km

east of Lough Muckno. The open waters of the lake form the main habitat in the site. Wet grassland is the main habitat around the periphery of the lake. Freshwater marsh vegetation merges with wet grassland vegetation in places. Muckno lake is the largest lake in County Monaghan and water supply for Dundalk, some nice areas of wet woodland and good site for waterfowl. Drumakill Lough also named Clare Lough is c. 600m south west of the proposal and has no obvious hydrological connection. The extent of the proposal combined with standard conditions does not pose a risk of significant effects on Muckno Lough. Having regard to the nature and scale of the proposed development and of other projects in the area, the FAC concluded that the proposed development alone or cumulatively with other projects and land uses would not be likely to give rise to significant effects on the environment.

Pat Coman on behalf of the FAC 29 June 2020

