



**An Coiste um Achomhairc
Foraoiseachta**

Forestry Appeals Committee

5 June 2020

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Our ref: FAC 210/2019

Subject: Appeal in relation to afforestation licence CN83580

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine in respect of afforestation licence CN83580.

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 CN83580 was granted by the Department on 22 August 2019.

Hearing

A hearing of appeal 210/2019 was conducted by the FAC on 19 May 2020.

FAC Members:

Mr Des Johnson (Chairperson), Mr Vincent Upton, Mr Pat Coman and
Mr Jim Byrne

Decision

Having regard to all the information before it the FAC has decided to confirm the decision of the Minister in respect of licence CN83580 for the reasons set out below.

The proposal comprises 3.46 ha of afforestation and 575m stock fencing in Carrigeenacreeha, Co. Roscommon comprising 85% Sitka Spruce and additional broadleaves. The soil is mineral in nature and the site stands at an elevation of 80 – 90m. The plot is in agricultural use. There is to be angle notch planting and application of 250 kg granulated rock phosphate. The site fronts onto a sparsely populated public road along its northern boundary.

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The licence was granted with the following conditions:

Northern boundary does not qualify for fencing as stipulated in the Forestry Schemes Manual 2015

Please exclude farm track at payment stage

Adhere to Environmental Requirements for Afforestation

All guidelines to apply

The FAC is satisfied that none of the licence conditions are inserted as mitigation measures for any European site.

There is a single appeal against the licence approval. The grounds of appeal are:

To clarify, there is a lacking of proper assessment.

There is no assessment of cumulative effects for example.

I am not the person paid to do the assessment.

Reading the Holohan judgement would be a help to you.

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 judgements of the CJEU;

Case C-258/11, Peter Sweetman and Others v An Bord Pleanála

Case C-164/17, Ede) Grace and Peter Sweetman v An Bord Pleanála

Case C-323/17, People Over Wind and Peter Sweetman v Coillte Teoranta

Case C-461/17, Brian Holohan and Others v An Bord Pleanála

In its statement of response to the FAC dated 3 December 2019 DAFM stated that; *"All standard operating procedures were followed during the approval process for this file. The site was screened for appropriate assessment using version v.26Nov19 which was the relevant screening procedure at the time".*

The FAC sought additional information from the DAFM regarding other plans or projects in the area, and the procedures followed in screening the proposal under the provisions of the Habitats Directive and in particular, if measures designed to avoid or reduce the effects of the proposed development on any Natura site had been taken into account. In response the DAFM stated that : *Individually the project listed does not represent a source, or if so has no pathway for an effect on any of the Natura sites listed in AA screening conclusions for individual Natura sites table. Consequently, the DAFM deems that there is no potential for the project to contribute to any effects, when considered in combination with any other plans and projects.*



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Prior to making its decision and following an examination of the information on file and reference to the EPA public website the FAC carried out a screening in accordance with the provisions of the Habitats Directive and an examination in respect of the EIA, and that screening is available on the public file. The appropriate assessment screening examined the 8 Natura 2000 sites within 15 km of the proposed site. Cloonshanville Bog SAC and Bellanagare Bog SAC are 3255m and 3646m respectively from the proposed site and both have active raised bogs as qualifying interests. The Callow Bog SAC 11115.19m and Tullaghanrock Bog SAC 14015m also contain active raised bogs as qualifying interests. The Mullygollan Turlough lists turlough as its qualifying interest. Annaghmore Lough SAC 12499m from the proposed site lists Geyer's whorl snail as a qualifying interest. Bellanagare Bog SPA and Lough Gara SPA 3655m and 9456m respectively from the proposed site list The Greenland White Fronted Goose and Whooper Swan amongst their qualifying interests.

The proposal is in the Upper Shannon catchment and Breedoge sub-catchment. There is no hydrological connection from the proposed site to any of the Natura sites and there is no Natura 2000 site in close proximity to the proposal.

The area is rural and remote with one-off houses sparsely populating the general area. A search of the Roscommon County Council planning website shows that there were 4 planning permissions sought, the most recent of these being in 2007. Regards forestry related projects the Department have provided a considerable list of other projects. However, many are at such a remove and lack connectivity that no in-combination effect arises having regard to the European sites listed. Others for example licence CN87165 for 18.23 ha afforestation was granted on 12 June 2017 but again having regard to the favourable conservation status no likelihood of a significant effect arises regarding the proposal when considered in combination with other plans or projects.

These other developments would not combine with the proposal to result in significant impacts on a European site. Having regard to the small scale, nature and location of the proposal, other developments in the area, the qualifying interests and conservation objectives of the European sites, the fact of no hydrological linkage and the separation distances, the FAC concludes that there is no likelihood of significant effects on any European site from the proposal alone or in combination with other plans or projects.

Annex II of the EIA Directive lists classes of development for which Member States may set thresholds or criteria for requiring environmental impact assessment. One such class is "initial afforestation and deforestation for the purpose of conversion to another type of land use". This is transposed into Irish Regulations as afforestation involving an area of more than 50 ha; 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 afforestation is significantly sub-threshold for the purposes of the EIA Directive at an area of 3.46 ha and as such does not require mandatory EIA. The proposed afforestation is located in a remote rural landscape with existing agriculture and forests. The landscape is not designated as sensitive in the Roscommon County Development Plan.

As noted above there are 8 European sites within 15 km of the proposed afforestation and there is no likelihood of significant effect on any of these sites site from the proposed afforestation. There are mature forests to the north east and west. The FAC concluded that there is no real likelihood of the proposal resulting in a significant effect on the environment, itself or cumulatively with other projects and that the submission of an Environmental Impact Assessment Report or formal screening is not required.

In confirming the decision to approve the licence, the FAC concluded that the proposed development is in accordance with Government Policy and Good Forestry Practice.

Yours sincerely,


Jim Byrne, on behalf of the Forestry Appeals Committee

Before making a decision, the Forestry Appeals Committee undertook an appropriate assessment screening and an examination of the proposal in relation to the requirements of the Habitats Directive and the Environmental Impact Assessment Directive. These considerations were based on information provided by the applicant, DAFM and other parties to the appeal and information available in the public domain. The FAC is satisfied that none of the licence conditions are inserte

The proposal is for 3.46 ha afforestation and 575m stock fencing in Carrigeenacreeha, Co. Roscommon comprising 85% Sitka Spruce and additional broadleaves. There is to be angle notch planting and application of 250 kg granulated rock phosphate. The site use is described as currently agricultural land on a mineral peat soil. The site stands at an elevation of 80 -90m. The proposed site fronts onto a public road for its entire northern side. The road is sparsely populated with one off houses and some farm buildings. The site is situated in the upper Shannon catchment, and Breedoge sub-catchment. The site itself does not adjoin an aquatic feature but a river runs approximately 240 northwest of the site and a river tributary runs 390m south of the site.

Licence Conditions

Northern boundary does not qualify for fencing as stipulated in the Forestry Schemes Manual 2015. Please exclude farm track at payment stage. Adhere to Environmental Requirements for Afforestation. All guidelines to apply.

None of the licence conditions are considered to be mitigation measures for any European site.

Appropriate Assessment Screening

The proposal is not related to or necessary for the management of any European site. There are 8 European sites within 15km from the proposed site,

Site Type	Site Code	Site Name	Distance To (m)	Qualifying Interests (* denotes a priority habitat)
SAC	000614	Cloonshanville Bog SAC	3255.98	Habitats 7110 Active raised bogs* 7120 Degraded raised bogs still capable of natural regeneration 7150 Depressions on peat substrates of the Rhynchosporion 91D0 Bog woodland*
SAC	000592	Bellanagare Bog SAC	3646.82	Habitats 7110 Active raised bogs* 7120 Degraded raised bogs still capable of natural regeneration 7150 Depressions on peat substrates of the Rhynchosporion
SAC	000612	Mullygollan Turlough SAC	8624.61	Habitats 3180 Turloughs*
SAC	000595	Callow Bog SAC	11115.19	Habitats 7110 Active raised bogs* 7120 Degraded raised bogs still capable of natural regeneration

Site Type	Site Code	Site Name	Distance To (m)	Qualifying Interests (* denotes a priority habitat)
				7150 Depressions on peat substrates of the Rhynchosporion
SAC	001626	Annaghmore Lough (Roscommon) SAC	12499.75	Habitats 7230 Alkaline fens Species 1013 Geyer's Whorl Snail (<i>Vertigo geyeri</i>)
SAC	002354	Tullaghanrock Bog SAC	14015.77	Habitats 7110 Active raised bogs* 7120 Degraded raised bogs still capable of natural regeneration 7150 Depressions on peat substrates of the Rhynchosporion
SPA	004105	Bellanagare Bog SPA	3655.30	Birds A395 Greenland White-fronted Goose (<i>Anser albifrons flavirostris</i>)
SPA	004048	Lough Gara SPA	9456.51	Birds A395 Greenland White-fronted Goose (<i>Anser albifrons flavirostris</i>) A038 Whooper Swan (<i>Cygnus cygnus</i>)

There is no hydrological connectivity from the proposed site to any of the listed Natura sites and there is no Natura 2000 sites in close proximity to the proposal..

The Tonaknick river lies 240 m northwest of the proposal and separated by agricultural land and a public road. The Tonaknick river joins the Owenafreesha river and subsequently the Bredoge river which flows along the eastern side of Cloonshanville Bog SAC, and subsequently drains into Lough Gara SPA at a straight line distance of 9.3 km. A tributary of the Peak river lies 390m south of the proposed afforestation, the Peak river also joins the Owenafreesha and Bredoge rivers and flows through the Cloonshanville SAC draining into Lough Gara SPA which is 3.5km straight line distance from the river tributary in a different subcatchment.

The Qualifying Interests of Cloonshaanville Bog SAC are habitats including Active raised Bogs and Bog Woodland. Given the lack of hydrological connection, there is no likelihood of any impact on this SAC. Among the Qualifying Interests of the Lough Gara SPA are the Greenland White-Fronted Goose, and the Whooper Swan. The NPWS conservation objectives for the Lough Gara SPA in regard to the favourable conservation status of a species is achieved when "there is and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis.

While agricultural land can be grazed by the qualifying interests of the Lough Gara SPA it is situated beyond typical foraging range of these species and on examination of the topography there is an abundance of agricultural land surrounding the proposed afforestation and there is an abundance of agricultural land between the proposed site and the SPA. Having regard to the size and scale of the proposal there is no likelihood that the proposal will have a significant effect on the SPA and its conservation objectives.

Ballinagare Bog SPA lies some 3.7 km to the west of the proposal and its qualifying interest of the Greenland White-fronted Goose and an objective to maintain or restore the favourable conservation condition of the SPA. Forestry is not listed as a threat on the Natura 2000 Data form prepared by the NPWS and the proposal is of a small scale and surrounded by agricultural land.

Callow Bog SAC and Tullaghanrock SAC lie at a considerable distance from the proposal in a different subcatchment and with no hydrological connection. Mulligollan Turlough SAC and Annaghmore Lough (Roscommon) SAC lie to the south in a separate catchment from the proposal.

The area is rural and remote with one-off houses sparsely populating the general area. A search of the Roscommon County Council planning website shows that there were only 4 planning permissions sought, the most recent of these being in 2007. Regards forestry related projects the Department have provided a considerable list of other projects. However, many are at such a remove and lack connectivity that no in-combination effect arises having regard to the European sites listed. Others for example licence CN87165 for 18.23 ha afforestation was granted on 12 June 2017 but again having regard to the favourable conservation status no likelihood of a significant effect arises regarding the proposal when considered in combination with other plans or projects.

These other developments would not combine with the proposal to result in significant impacts on a European site. Having regard to the scale, nature and location of the proposal, other developments in the area, the qualifying interests and conservation objectives of the European site in proximity to the proposal, the fact of no hydrological linkage and the separation distance to those sites, the FAC concludes that there is no likelihood of significant effects on any European site from the proposal alone or in combination with other plans or projects.

EIA Examination

The EU Directive (Directive 2011/92/EU as amended by Directive 2014/52/EU) sets out, in Annex I a list of projects for which EIA is mandatory. Annex 11 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 Forestry Regulations 2017 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 proposed afforestation is substantially sub-threshold and is located in a remote rural landscape with existing agriculture and forests. The landscape is not designated as sensitive in the County Development Plan.

As noted above there are 8 European sites within 15 km of the proposed afforestation and there is no likelihood of significant effect on any of these sites site from the proposed afforestation. There are mature forests to the north east and west. The FAC concluded that there is no real likelihood of the proposal resulting in a significant effect on the environment, itself or cumulatively with other projects

and that the submission of an Environmental Impact Assessment Report or formal screening is not required.

Jim Byrne
On behalf of the FAC