



11th June 2020

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

Subject: Appeal FAC369/2019 regarding licence CN84705

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 CN84705 for 4.53 ha afforestation at Fortland, Co. Sligo was issued by the Department of Agriculture, Food and the Marine on 7th November 2019.

Hearing

A hearing of appeal FAC369/2019 was held by the FAC on 9th June 2020.

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

Decision

Having regard to the evidence before it and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to confirm the decision of the Minister regarding licence CN84705.

The licence relates to 4.35 ha afforestation with 85% Sitka spruce and 15% broadleaves and fencing of 983 metres of fencing. The site is described as enclosed, agricultural land on mineral, peat soils at an elevation of 80-90 metres elevation with a grass, rush vegetation type. Site preparation is proposed as mounding with woody weed removal. There is an ESB line running across the site and a corridor around this line will remain unplanted. There is a 10-metre setback from the public road and a 5-metre setback from a track adjacent to the site proposed amounting to 0.384 hectares of unplanted area. There is an existing hedgerow on the perimeter of the site which will be retained with a 2-3 metre unplanted setback around the boundary. Fertilisation with 250kg granulated rock phosphate per hectare and herbicide weed control in years 0-3 are proposed. The proposal is situated in the Sligo Bay & Drowse catchment. There are no aquatic features identified on the site. There are no recorded, marked aquatic features on or adjacent to site on current or historic mapping. A river runs to the west of the site but c.75 metres at its closest point and there is no indication of connection from the site to this river.

There is one appeal against the decision. The grounds suggest that on the basis of information submitted it is not possible to grant a Licence which would be in compliance with the EIA and Habitats Directives having regard to specific judgements of the CJEU. Furthermore, the grounds suggest that the test for Appropriate Assessment Screening in Irish Law is set out by Geoghegan J. in *Kelly v ABP* and goes on to quote from that judgement. There is also reference to the assessment of cumulative effects.

In a statement to the FAC, the DAFM stated that they are satisfied that the decision met their criteria and guidelines and that they confirm the licence. They state that all Natura sites within 15km have been screened out due to a lack of connectivity to any of the Natura sites. They also state that they deem that the project cannot have an impact individually or in combination with other plans or projects in the area.

In considering the appeal and before making a decision, the FAC undertook a screening and examination of the proposal in relation to the requirements of the Habitats and EIA Directives respectively and copies of these considerations are contained in the public file.

There are five European sites within 15km of the proposal and, based on the nature and scale of the proposal and its surroundings, examination of sites outside of this radius was not considered necessary. The Ox Mountains SAC lies 6.6km to the south of the proposal and is a large upland area with qualifying interests covering both habitats and species. The proposal is of a small scale and lies at a considerable distance from the boundary of the SAC and in a downstream direction with no hydrological connection and could not impact on the hydrology of the area. It is also beyond the regeneration range of the associated species and habitats of both the SAC and the proposal. Killala Bay/Moy Estuary SAC and SPA lie to the west of the proposal in a separate catchment with no hydrological connectivity to the proposal and at a distance of over 10km. Aughris Head SPA lies over 11km to the east of the proposal and is designated for a seabird species. Knockalongy and Knockachree Cliffs SAC is situated over 14km to the east in a separate subcatchment with no hydrological connection.

There are very few other forestry projects in the area and other permissions and projects include dwellings and agricultural buildings. These other developments would not combine with the proposal to result in significant impacts on a European site. There are no conditions on the licence that relate to the mitigation of effects 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 sites in proximity to the proposal, the absence of a hydrological connection 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.

The EU EIA 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 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. 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. Forest cover in the townland and within 5km is identified as 12.33% and 7.16% respectively. There are few other forestry licences in the vicinity or other projects. The landscape is not designated in this area and the proposal is of a small scale and set back from the public road and is not likely to impact on the amenity of the area. Traffic will likely increase during operations, but this will be temporary, and the activities would not be out of keeping with land use in the area. The area is considered sensitive to fisheries but does not contain or adjoin any watercourse. The area is not within a SAC or SPA and there is no likelihood of it impacting on designated sites. There are no archaeological monuments in or adjoining the site. Having regard to the nature, scale and location of the proposal, the FAC concluded that there is no real likelihood of it 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.

The FAC concluded that the proposal is in line with Government policy and good forestry practice. Before making its decision, the FAC considered all of the information submitted with the application, the processing of the application by the DAFM, the grounds of appeal and any submissions received.

Yours sincerely,

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

Pat Coman on behalf of the Forestry Appeals Committee



Before making a decision, the Forestry Appeals Committee (FAC) undertook an appropriate assessment screening and an examination regarding the likelihood of impacts on the environment 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 original licence relates to 4.35 ha afforestation with 85% Sitka spruce and 15% broadleaves and fencing of 983 metres of fencing. The site is described as enclosed agricultural land on mineral, peat soils at an elevation of 80-90 metres elevation with a grass, rush vegetation type. Site preparation is proposed as mounding with woody weed removal. There is an ESB line running across the site and a corridor around this line will remain unplanted. There is a 10 metre setback from the public road and a 5 metre setback from a track adjacent to the site proposed amounting to 0.384 hectares of unplanted area. There is an existing hedgerow on the perimeter of the site which will be retained with a 2-3 metre unplanted setback around the boundary. Fertilisation with 250kg granulated rock phosphate per hectare and herbicide weed control in years 0-3 are proposed. The proposal is situated in the Sligo Bay & Drowse catchment. There are no aquatic features identified on the site. There are no recorded, marked aquatic features on or adjacent to site on current or historic mapping. A river runs to the west of the site but c.75 metres at its closest point and there is no indication of connection from the site to this river.

Appropriate Assessment Screening

There are five European sites within 15km of the proposal which are listed below along with their direct distances between boundaries, qualifying interests and a link to their conservation objectives. Based on the nature and scale of the proposal and its surroundings examination of sites outside of this radius was not considered necessary. The Ox Mountains SAC lies 6.6km to the south of the proposal and is a large upland area with qualifying interests covering both habitats and species. The proposal is of a small scale and lies at a considerable distance from the boundary of the SAC and in a downstream direction with no hydrological connection and could not impact on the hydrology of the area. It is also beyond the regeneration range of the associated species and habitats of both the SAC and the proposal. Killala Bay/Moy Estuary SAC and SPA lie to the west of the proposal in a separate catchment with no hydrological connection to the proposal and at a distance of over 10km. Aughris Head SPA lies over 11km to the east of the proposal and is designated for a seabird species. Knockalongy and Knockachree Cliffs SAC is situated over 14km to the east in a separate subcatchment with no hydrological connection.

There are very few other forestry projects in the area and other permissions and projects include dwellings and agricultural buildings. These other developments would not combine with the proposal to result in significant impacts on a European site. There are no conditions on the licence that relate to the mitigation of effects 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 sites in proximity to the proposal, the absence of a hydrological connection 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.

| Site Type | Site Code | Site Name | Distance To (m) | Qualifying Interests (* denotes a priority habitat) | Conservation Objectives |
|-----------|-----------|-----------|-----------------|--|---------------------------------------|
| SAC | 2006 | Ox | 6595.64 | Habitats | http://www. |

| | | | | | |
|-----|------|--|----------|--|---|
| | | Mountains Bogs SAC | | <p>3110 Oligotrophic waters containing very few minerals of sandy plains (<i>Littorelletalia uniflorae</i>)</p> <p>3160 Natural dystrophic lakes and ponds</p> <p>4010 Northern Atlantic wet heaths with <i>Erica tetralix</i></p> <p>4030 European dry heaths</p> <p>7130 Blanket bogs (* if active bog)</p> <p>7140 Transition mires and quaking bogs</p> <p>7150 Depressions on peat substrates of the Rhynchosporion</p> <p>Species</p> <p>1528 Marsh Saxifrage (<i>Saxifraga hirculus</i>)</p> <p>1013 Geyer's Whorl Snail (<i>Vertigo geyeri</i>)</p> | npws.ie/sites/default/files/protected-sites/conservation-objects/CO002006.pdf |
| SAC | 458 | Killala Bay/Moy Estuary SAC | 10238.4 | <p>Habitats</p> <p>1130 Estuaries</p> <p>1140 Mudflats and sandflats not covered by seawater at low tide</p> <p>1210 Annual vegetation of drift lines</p> <p>1230 Vegetated sea cliffs of the Atlantic and Baltic coasts</p> <p>1310 Salicornia and other annuals colonising mud and sand</p> <p>1330 Atlantic salt meadows (<i>Glauco-Puccinellietalia maritimae</i>)</p> <p>2110 Embryonic shifting dunes</p> <p>2120 Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes)</p> <p>2130 Fixed coastal dunes with herbaceous vegetation (grey dunes)*</p> <p>2190 Humid dune slacks</p> <p>Species</p> <p>1095 Sea Lamprey (<i>Petromyzon marinus</i>)</p> <p>1014 Narrow-mouthed Whorl Snail (<i>Vertigo angustior</i>)</p> <p>1365 Harbour Seal (<i>Phoca vitulina</i>)</p> | http://www.npws.ie/sites/default/files/protected-sites/conservation-objects/CO000458.pdf |
| SAC | 1669 | Knockalongy and Knockachree Cliffs SAC | 14168.72 | <p>Species</p> <p>1421 Killarney Fern (<i>Trichomanes speciosum</i>)</p> | http://www.npws.ie/sites/default/files/protected-sites/conservation-objects/CO001669.pdf |
| SPA | 4036 | Killala Bay/Moy Estuary SPA | 10132.34 | <p>Birds</p> <p>A157 Bar-tailed Godwit (<i>Limosa lapponica</i>)</p> <p>A162 Redshank (<i>Tringa totanus</i>)</p> <p>A160 Curlew (<i>Numenius arquata</i>)</p> <p>A149 Dunlin (<i>Calidris alpina</i>)</p> <p>A144 Sanderling (<i>Calidris alba</i>)</p> <p>A141 Grey Plover (<i>Pluvialis squatarola</i>)</p> <p>A140 Golden Plover (<i>Pluvialis apricaria</i>)</p> <p>A137 Ringed Plover (<i>Charadrius hiaticula</i>)</p> <p>Habitats</p> <p>Wetlands</p> | http://www.npws.ie/sites/default/files/protected-sites/conservation-objects/CO004036.pdf |
| SPA | 4133 | Aughris Head SPA | 11350.16 | <p>Birds</p> <p>A188 Kittiwake (<i>Rissa tridactyla</i>)</p> | http://www.npws.ie/sites/default/files/protected-sites/conservation-objects/CO004133.pdf |

| | | | | | |
|--|--|--|--|--|---------------------------------------|
| | | | | | ation objecti ves/CO0041 33.pdf |
|--|--|--|--|--|---------------------------------------|

EIA Preliminary Examination

The EU EIA 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 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. 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. Forest cover in the townland and within 5km is identified as 12.33% and 7.16% respectively. There are few other forestry licences in the vicinity or other projects. The landscape is not designated in this area and the proposal is of a small scale and set back from the public road and is not likely to impact on the amenity of the area. Traffic will likely increase during operations but this will be temporary and the activities would not be out of keeping with land use in the area. The area is considered sensitive to fisheries but does not contain or adjoin any watercourse. The area is not within an SAC or SPA and there is no likelihood of it impacting on designated sites. Existing hedgerows will be maintained and a setback is included, which will provide some benefits in relation to biodiversity. There are no archaeological monuments in or adjoining the site. Having regard to the nature, scale and location of the proposal, the FAC concluded that there is no real likelihood of it 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.

Vincent Upton On Behalf of the Forestry Appeals Committee

