



An Coiste um Achomhairc  
Foraoiseachta

Forestry Appeals Committee

12 June 2020

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Our ref: FAC 293/2019

Subject: Appeal in relation to afforestation licence CN83521

Dear [REDACTED]

I refer to the appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine (DAFM) in respect of afforestation licence CN83521.

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 CN83521 was granted by the Department on 04 October 2019.

#### Hearing

A hearing of appeal 293/2019 was conducted by the FAC on 28 April 2020.

#### FAC Members:

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

#### Decision

Having considered all of the information before it, including a consultant's report, the FAC has decided to confirm the licence relating to CN83521 for the reasons set out below.

The proposal is for afforestation of a 12.97ha site at Rathskeagh Upper, Co. Westmeath and comprises five plots of which four are unplanted bio-diversity plots, and plot 1 of 11.59ha is proposed to be planted with 85% Sitka Spruce and 15% broadleaves. Three of the biodiversity plots are to accommodate 60m dwelling setbacks. Soils are mineral and peat, elevations are 110m to 120m, ground preparation is mounding and planting method is slit planting. The land is agricultural and the general vicinity is one of improved agricultural land, with relatively small dispersed pockets of forestry. An EPA mapped watercourse runs south to north along the proposal's western boundary. There are additional conditions attached to the licence to (1) adhere to Environmental Requirements for Afforestation, and (2) all guidelines to apply. The FAC is satisfied none of these conditions are in place for the purposes of mitigation in respect of any European site.

An Coiste um Achomhairc  
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The application was referred by DAFM to the Department of Culture, Heritage and the Gaeltacht and their response following a site visit in April 2019 led to the exclusion of a section of marsh habitat at the northern end of the proposal, this is at the proposal's furthest point from Ballymore Fen. The indicated area is listed as a bio-diversity plot on the licence at appeal.

There is one appeal before the committee 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 European Court of Justice Rulings; C-258/11, C-164/17, C-323/17 and C-461/17. That the test for Appropriate Assessment Screening in Irish law is as set out by "Finlay Geoghegan J. in; Kelly -v- An Bord Pleanala [2014] IEHC 400 (25 July 2014) "there is no need to establish such an effect; it is, as Ireland observes, merely necessary to determine that there may be such an effect."

In response to the appeal DAFM included that the proposed afforestation area was viewed on IFORIS maps for any potential impact on Natura 2000 sites, watercourses, Archaeology, Forest Cover, protected species and habitats (Curlew, FWPM, Small white Orchid, Hen Harrier), and that the proposed afforestation area was subject to Appropriate Assessment Screening. Also, the Natura 2000 sites within 15km of the proposed afforestation area were examined for any potential impact arising from the proposed operations. A number of websites including Westmeath County Development plan, An Bord Pleanala, and EPA mapping were examined by DAFM for other projects in the vicinity of the proposed afforestation area. It was concluded by DAFM that the proposed afforestation will have no effect, either alone or in combination with other projects in the vicinity, to any Natura 2000 area.

The FAC subsequently sought and received additional information from DAFM. In the reply DAFM set out for each Natura site within a 15km radius of the proposal and listed planning permissions/planning applications from County Council planning and An Bord Pleanala, as well as EPA developments, other forestry related projects and cited certain policy and objective extracts from the Westmeath County Development Plan. In what was provided the Department concluded that the proposed development, considered in combination with other plans and projects would not give rise to the possibility of a significant effect on any Natura 2000 site.

On the basis of the information and evidence before it, the FAC is satisfied the project is not necessary for or connected with the management of any Natura 2000 site. There are a number of European sites within a 15km radius of the site; Ballymore Fen SAC at 155m, Lough Ennell SAC at 13km, Spilt Hills and Longhill Esker SAC at 13.6km, Carnpark Bog SAC at 14.4km, Lough Ree SAC at 14.6km, Lough Iron SPA at 13.8km and Lough Ree SPA at 14.8km.

The FAC sought and received a report by an independent consultant in relation to this proposal and, in particular, a Stage 1 screening for Appropriate Assessment in accordance with the provisions of Article 6(3) of the Habitats Directive (92/43/EEC). The report, dated 27 April 2020, was considered by the FAC in coming to its decision and a copy of the report is contained in the public file. The report identifies the Natura 2000 sites located, at least in part, within 15 kilometres of the project lands, along with their qualifying interests and conservation objectives. The report concludes that the afforestation project proposed is clearly not related to or necessary for the management of any Natura





An Coiste um Achomhairc  
Foraoiseachta

Forestry Appeals Committee

site, and the proposed tree planting of itself or in combination with any other plans or projects is not likely to have any significant effect on any Natura 2000 site.

Regards Ballymore Fen SAC which is located, at the nearest point, about 155 metres from the project lands, on the south or opposite side of the local road (L 5342), the report sets out as follows: *The fen drains both to the north and to the south. There is an elevation on the south side of the local road. The stream on the west-northwest side of the project lands flows from the SAC. There is no hydrological connection from the project lands to the SAC. The development will not impact on the water regime at the SAC. The SAC has been designated for "Transition mires and quaking bogs [7140]". The conservation objective is to maintain the favourable conservation condition of Transition mires and quaking bogs in Ballymore Fen SAC, which is defined by a detailed list of attributes and targets. Having regard to the drainage pattern and water regime in the area, as referred to above, the project is not likely to have a significant effect on the Ballymore Fen SAC.*

The report concludes that the proposed tree planting of itself or in combination with any other plans or projects is not likely to have any significant effect on any Natura 2000 site. The FAC is satisfied that the screening procedure detailed in the consultant's report is in accordance with the requirements of the Habitats Directive and adopts the report and its conclusions.

In addition, the report included a preliminary screening for EIA. The EU Directive sets out, in Annex 1 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 1. Annex 11 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 11). The Irish Regulations 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 proposal is substantially sub-threshold. The report sought and received by the FAC from the independent consultant concluded that the proposed project would not be likely to give rise to significant effects on the environment, and the possibility of significant effects on the environment can be ruled out. The FAC adopts the report and the conclusion reached therein.

The FAC concludes that the proposal is in line with Government policy and good forestry practice.

Yours sincerely,

Pat Coman, on behalf of the Forestry Appeals Committee



## **FAC Case Ref: 293/2019**

## **DAFM Case Ref: CN83521**

### *Details of application:*

The application as originally submitted was for the afforestation of a total area of 12.97 hectares. A total of 5 plots were indicated. The bulk of the lands are in plot no. 1 which was to be planted mainly (85%) with Sitka Spruce with some additional broadleaf trees. This plot comprised of 11.59 hectares. Plot no. 2, which was a small plot of .42 hectares at the northern end of the lands, was to be planted with Alder trees. 3 small plots i.e. plots 3, 4 and 5, near the public road and close to existing houses at the southern end of the lands, were indicated as reserved for biodiversity. The elevation was indicated to be 110-120 metres, the soils mineral and peat and the vegetation grass and rush.

Following a response to a referral to the Department of Culture, Heritage and the Gaeltacht, the Department wrote to the applicant on 25 June 2019 requesting that plot No. 1 should be reserved for biodiversity purposes. The Department of Culture, Heritage and the Gaeltacht had indicated in a report, following an inspection, that the northern part of the lands contained march wetland habitat. It was stated that the northern part of the lands was an area of high ecological importance and may contain the annexed habitat, 'hydrophilous tall herb fringe communities of plains and of the montane to alpine levels (6430)'. It was recommended that this area be reserved as an area of biodiversity importance. It was also noted that a snipe was observed in the area and that the area was suitable for snipe breeding although it could not be determined if that observed in this area was breeding. Snipe were observed in other areas also during the site visit.

The letter from the Department to the applicant of 25 June 2019 also requested that the boundaries to houses should be increased. Revised plans were submitted on 3 July 2019. In these plans Plot No. 2 at the northern end of the lands are indicated for Biodiversity purposes and the planting of Alders is omitted. I note that in both the original and revised plans that the notes on the plans refer to a set back of 60 metres from houses.

### *Location and details of project lands:*

The project lands are located in a rural area of County Westmeath about 17 kilometres west of Mullingar, about 11 kilometres southeast of Ballymahon and about 3 kilometres east of the village of Ballymore. The lands form a triangular section of the northern part of the townland of Rathskeagh Upper which projects northwards from local road 5342.

The lands are in agricultural use and are divided up into several relatively small fields. There are significant sized hedges at field boundaries and at the northern edge of the public road. Vegetation is indicative of restricted drainage in parts of the lands. The restricted drainage at the northern end of the lands can be seen, from the



notation, on the old Ordnance Survey maps of the area. There is also a stream along the western/north-western edge of the lands which is also visible on the O.S. maps. This stream flows towards the north. The O.S. maps indicate 2 springs in the lands and a network of drains in the northern portion which join the main stream near the northern end of the lands. The O.S. maps indicate the road level at the site frontage near the centre of the lands at about 334 feet AOD. The road dips down towards the stream at the western edge. The level here is indicated to be 330.6 feet AOD.

The predominant land use in the area is agriculture. The aerial photography for the area does not indicate a significant amount of forestry in the immediate area although there are relatively large planted areas about 1 kilometre away both to the north and east. There are also some houses alongside the public road including 2 on the southside of the road opposite the project lands and one close by in the lands immediately to the west of the stream and lands. Google aerial photography and a sign at the roadside indicates a possible tourist facility called Inny Camping also on the south side of the local road opposite the project lands.

#### *Decision of DAFM:*

The Department decided to approve the application and grant a licence.

The licence was subject to a number of conditions of a general nature. The conditions require compliance with various standards and guidelines. Some of the conditions are quite vague e.g. condition 13 state. Additional Environmental & Silvicultural Conditions - Adhere to Environmental Requirements for Afforestation, - All guidelines to apply. There is no indication that any of the conditions have been imposed in order to mitigate or reduce any effect of the project on any Natura 2000 site.

#### *Grounds of Appeal:*

It is submitted 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 judgements of the CJEU; Case C-258/11 Peter Sweetman and Others v An Bord Pleanala, Case C-164/17 Edel Grace and Peter Sweetman v An Bord Pleanala, Case C-323/17 People Over Wind and Peter Sweetman v Coillte Teoranta, and Case C-461/17 Brian Holohan and Others v An Bord Pleanala.

It is also submitted that the test for Appropriate Assessment Screening in Irish law is as set out by "Finlay Geoghegan J. in; Kelly -v- An Bord Pleanala [2014] IEHC 400 (25 July 2014) "There is no need to establish such an effect; it is, as Ireland observes, merely necessary to determine that there may be such an effect."

In a submission which he had made on a date prior to the lodgement of the current appeal and which he had requested be attached to all his appeals, unless specifically requested not, the appellant had stated that there is a lack of proper assessment as for example there is no assessment of cumulative effects.



#### *DAFM response to Grounds of Appeal:*

It is submitted that the proposed afforestation area was subject to Appropriate assessment screening. The Natura 2000 sites within 15km of the proposed afforestation area were examined for any potential impact arising from the proposed operations. A number of websites including those of Westmeath County Council, An Bord Pleanála and EPA mapping were examined for other projects in the vicinity of the proposed afforestation area. It was concluded that the proposed afforestation will have no effect, either alone or in combination with other projects in the vicinity, on any Natura 2000 area. After considering all of the above it was concluded that the proposed afforestation was in accordance with all Forest Service Guidelines and that the licence for afforestation should be granted.

The response confirms the recommendation to grant a licence.

In a further response to queries as to whether or not it took account of mitigation measures the Department has responded stating "When the Forest Service of the Department of Agriculture, Food and the Marine, first assessed the likely effects of this proposed development on the local receiving environment it did take into consideration standards of good forest practice, and more specifically when applying the Appropriate Assessment Procedure then in use to carry out an Appropriate Assessment Stage 1 screening in respect of the proposed development, it also took those same standards of good forest practice into its consideration as mitigation measures in terms of their potential to avoid or reduce the likely effects of the proposed development on the integrity of any Natura 2000 sites in view of those sites' conservation objectives"

A further detailed report of a study carried out on 20/2/ 2020 was submitted This lists details of the Natura 2000 sites within 15 kilometres, other projects considered in the in-combination assessment and contains details of several provisions contained in the current Co. Westmeath development plan. The report concludes that the project when considered in combination with other plans and projects, will not give rise to the possibility of a significant effect on any Natura site.

#### *Screening for Appropriate Assessment:*

There are 8 Natura 2000 sites located, at least in part, within or very close to 15 kilometres of the project lands. There are 5 SACs and 3 SPAs within the distance referred to. These are:

Lough Ree SAC located, at the nearest point, 14.78 kilometres from the project lands.

Carn Park Bog SAC located, at the nearest point, 14.77 kilometres from the project lands.

Split Hills and Long Hill Esker SAC located, at the nearest point, 13.34 kilometres from the project lands.

Lough Ennell SAC located, at the nearest point, 12.44 kilometres from the project lands.

Ballymore Fen SAC located, at the nearest point, about 155 metres from the project lands.

Lough Ree SPA located, at the nearest point, 15.05 kilometres from the project lands.

Lough Ennell SPA, located at the nearest point, 13.09 kilometres from the project lands.

Lough Iron SPA, located at the nearest point, 12.79 kilometres from the project lands.

(My measurements are generally somewhat less than those in the Department's report).

The Lough Ree SAC is located almost 15 kilometres from the project lands at the nearest point. Drainage from the lands is northwards to the River Inny system which flows to Lough Ree. The hydrological route is a circuitous one and I estimate the distance along this route is over 20 kilometres (Approx 22 km).

The Lough Ree SAC has as its qualifying interests

Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation [3150]

Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (\* important orchid sites) [6210]

Active raised bogs [7110]

Degraded raised bogs still capable of natural regeneration [7120]

Alkaline fens [7230]

Limestone pavements [8240]

Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0]

Bog woodland [91D0]

Lutra lutra (Otter) [1355]

The majority of these are vegetation type habitats on the sides of the lake. The relatively small-scale development proposed at a hydrological distance of over 20 kilometres will have no effect on these habitats or on the water quality in the lake. I consider that due to the scale of the project and the distance to the Lough Ree SAC the project is not likely to have a significant effect on the SAC.

Carn Park Bog SAC is also located almost 15 kilometres from the project lands, at the nearest point. The SAC is located to the southwest and drainage from the lands is towards the north. The SAC is located in a different sub-catchment than the lands and there is no hydrological connection from the lands to the SAC. The SAC's qualifying interests are Active raised bogs [7110] and Degraded raised bogs still capable of natural regeneration [7120]. The development will not impact on the water



regime in the SAC in terms of flow or quality. In the circumstances the project is not likely to have any significant effect on the SAC.

The Split Hills and Long Hill Esker SAC is located to the southeast at a distance of over 13 kilometres from the project lands. Drainage from the SAC is towards the south and the River Brosna sub-catchment of the Shannon. The Brosna joins the Shannon near Shannon Harbour well downstream of Athlone. There is no hydrological connection from the lands to the SAC. The SAC has been designated for Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia). Having regard to the lack of any hydrological connection and the distance involved the project is not likely to have any significant effect on this SAC.

The Lough Ennell SAC is located over 12 kilometres from the project lands. The SAC is to the north east of the lands. Drainage from Lough Ennell is southwards to the River Brosna which joins the Shannon near Shannon Harbour a short distance to the north of Banagher. The project lands drain northwards and there is no hydrological connection from the lands to Lough Ennell. The SAC has been designated for Alkaline fens [7230]. The project will have no impact on water flow or water quality in the SAC. The development is not likely to have any significant effect on the SAC.

Ballymore Fen SAC is located, at the nearest point, about 155 metres from the project lands. The SAC is located on the south or opposite side of the local road (L 5342). The fen drains both to the north and to the south. There is an elevation on the south side of the local road. The stream on the west-northwest side of the project lands flows from the SAC. There is no hydrological connection from the project lands to the SAC. The development will not impact on the water regime at the SAC. The SAC has been designated for "Transition mires and quaking bogs [7140]". The conservation objective is to maintain the favourable conservation condition of Transition mires and quaking bogs in Ballymore Fen SAC, which is defined by a detailed list of attributes and targets. Having regard to the drainage pattern and water regime in the area, as referred to above, the project is not likely to have a significant effect on the Ballymore Fen SAC.

The 3 SPAs located in part within or close to 15 kilometres from the project lands i.e. Lough Ree, Lough Ennell and Lough Iron SPAs are all over 12.5 kilometres from the lands. The SPAs have been designated with, inclusive of all 3 sites, special interests

Little Grebe (*Tachybaptus ruficollis*) [A004]

Whooper Swan (*Cygnus cygnus*) [A038]

Wigeon (*Anas penelope*) [A050]

Teal (*Anas crecca*) [A052]

Mallard (*Anas platyrhynchos*) [A053]

Shoveler (*Anas clypeata*) [A056]

Tufted Duck (*Aythya fuligula*) [A061]

Common Scoter (*Melanitta nigra*) [A065]

Goldeneye (*Bucephala clangula*) [A067]



Coot (*Fulica atra*) [A125]

Golden Plover (*Pluvialis apricaria*) [A140]

Lapwing (*Vanellus vanellus*) [A142]

Common Tern (*Sterna hirundo*) [A193]

Wetland and Waterbirds [A999]

Pochard *Aythya farina* [A059]

Greenland White-fronted Goose *Anser albifrons flavirostris* [A395]

The species listed are essentially waterbirds requiring areas of open water. The habitats in the project lands do not include open water areas and the types of habitats present in the project lands are common in the wider area where the lands are located. The special interests of the 3 SPAs do not include the snipe referred to as being present on the project lands in the response from the Department of Culture Heritage and the Gaeltacht. The revised proposal also involves retaining the northern part of the lands, referred to in the response as being of high ecological importance, as a Biodiversity area. Having regard to the distance of the lands from the SPAs and the circumstances as set out above I consider that the project is not likely to have any significant effect on any of the designated SPAs referred to.

The Department in its submission refers to some additional afforestation, felling and forest road licences in the area, although no maps indicating their location have been submitted. As I consider that the project proposed in this case would have no effect on any of the Natura sites, I consider also that it would have no in-combination effects with any other forestry development which would be likely to have a significant effect on any of the sites in question. The afforestation proposed would be a self-contained one within the project lands and would not have any significant in-combination effects with other forestry developments. The Department also references some small-scale developments for which planning permission has been granted. In checking recent planning permissions in the area, I find that they are generally of small scale, relating mainly to houses and house extensions. None of these are in lands immediately abutting the project lands. As I consider that the proposed tree planting would have no effect on any Natura 2000 site, I also consider that it would not have any in-combination effect with any other project or plan.

In the above assessment I have not considered the normal good afforestation practices referred to in the documentation in forming my conclusions. I consider, however, that compliance with the various guidelines etc referred to would re-enforce my conclusions. I also consider that the practices referred to are designed to protect the local environment, as they are general standards for all afforestation, and are not designed to prevent any significant effect on the Natura sites.

The afforestation project proposed is clearly not related to or necessary for the management of any Natura site. I conclude that the proposed tree planting of itself or in combination with any other plans or projects is not likely to have any significant effect on any Natura 2000 site.



### *Screening for Environmental Impact Assessment (EIA):*

In my screening for EIA I have regard to the requirements contained in the EU Directive (Directive 2011/92/EU as amended by Directive 2014/52/EU), in Irish regulations transposing the Directive into Irish law and to the Guidance for Consent Authorities regarding Sub-threshold Development published by the Department of the Environment in August 2003. I have had regard to the characteristics of the project, the location of the project (including the environmental sensitivity of the area) and the types and characteristics of potential impacts of the development as referred to in Annex 11 of the Directive. I have also taken account of my conclusions, set out above, in relation to the likely impact of the development on any Natura 2000 site.

The EU Directive sets out, in Annex 1 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 1. Annex 11 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 11). The Irish Regulations 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 site is located in an area where the predominant land uses are agriculture and to a lesser extent forestry. Forestry by its nature involves afforestation, thinning, clear-felling and re-planting. Such activities are normal and not out of character visually or otherwise in an area such as that in question. The area is not designated as being of exceptional or special visual amenity significance. The proposed plantation would be visible from some locations along the surrounding road network and from some nearby house curtilages. It would not, however, be particularly prominent or out of character in the landscape. I note that the response from the planning authority refers to views from the local road northwards as being listed in the Westmeath County Development Plan. The view northwards, at the road frontage of the project lands is, however, restricted by roadside hedges and other vegetation at field boundaries within the project lands. There are more open views northwards from the road at other locations particularly at locations further east. The views in question are not particularly spectacular or of other than local interest. I consider that the tree planting proposed would not have a significant impact on the landscape by itself or cumulatively with other developments.

The tree planting and subsequent maintenance, thinning and felling will give rise to some additional heavy vehicle traffic on the local roads. This will cause some inconvenience in the short term but would not of itself result in such likely significant effects on the environment as to require compliance with the full Environmental Impact Assessment process. I also consider that the project would not be likely to give rise to significant effects on the environment due to water or air pollution.

I note that there are no designated national monuments located in the subject lands. The nearest such monuments are located in lands to the north at a distance of about 200 metres from the northern end of the lands. The monuments consist of the site of Doon Castle and an adjoining ringwork. The project would have no effect on these sites.

The project would not be located in an area which is particularly sensitive. Any impacts on the environment would not be significant. The area to be planted is less than one quarter of the area of afforestation for which an EIAR would be mandatory.

I consider that the proposed project would not be likely to give rise to significant effects on the environment. I consider that the possibility of significant effects on the environment can be ruled out on the basis of this preliminary screening

*Overall conclusion:*

I conclude that the proposed project would not be likely to have significant effects on the environment and the carrying out of EIA is not required. I also conclude that the project individually, or in combination with other plans or projects, is not likely to have any significant effect on any Natura 2000 site, having regard to the reasons for designating the sites and their conservation objectives.

Padraic Thornton

27 April 2020