



19 March 2020

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Subject: Appeal in relation to licence FAC 171/2018 CN81818

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

Afforestation license CN81818 was issued on 5th March 2018.

Hearing

An oral hearing was conducted by the FAC at the Agriculture Appeals Office, Kilminchy Court, Portlaoise, Co. Laois on 25 February 2020.

In attendance at the oral hearing:

Appellants:

DAFM Reps:

Applicant Representatives:

FAC Members:

Secretary to the FAC:

[REDACTED]
Mr Seppi Hona and Ms Mary Coogan

[REDACTED]
Mr. Des Johnson (Chairperson), Mr. Vincent Upton, Ms Mary lawlor and
Mr. Pat Coman

Ms. Ruth Kinehan

Decision

Having regard to the evidence, written and oral, before it and, in particular, the considerations set out below, the FAC has decided to confirm the decision of the Minister regarding licence CN81818.

The proposal is for afforestation on a stated site area of 11.41 ha at Tullynascreen Co Leitrim with 1597m of fencing. Contrary to the grounds of appeal the site is not within Gubs townland. The site is in two plots with plot 1 of 10.88 ha (GPC 3) receiving 90% sitka spruce and 10% broadleaves and plot 2 of 0.53 ha (GPC 8) receiving broadleaves mix. The site comprises enclosed agricultural land with mineral

and peat soil with grass rush vegetation, is moderately exposed at an elevation of between 130m and 160m. Part of the project area slopes northwards and the remainder has a modest southward slope.

Before making its decision, the FAC carried out an examination of the proposed development in the context of the EIA Directive and a Stage 1 screening in accordance with the requirements of the Habitats Directive. These are available on the public file.

Regards Appropriate Assessment Screening, the closest European site is the Lough Gill SAC, a small drain at the south of the site connects to the Tullynascreen stream at 1km and from there Lough Gill SAC is at a hydrological distance of 4.2 km downstream. However, due to the minor nature of the drain on the site at over 5km distance from the SAC and the land gradients with the greater part of the site sloping away to north, there is no possibility of a significant effect on the interests of the SAC. The Kilanummery river (Bonet sub-catchment and Sligo Bay Catchment) is 40m from the northern tip of the site and otherwise over 110m from the site boundary. From its nearest point the Kilanummery River has a hydrological distance of 5.2 km downstream to the Lough Gill SAC, but due to the lack of a direct connection and the nature and scale of the project there is no possibility for any significant effect on the SAC or its the qualifying interests. The Unshin River SAC (9.4km distance) has no connectivity to the site and there is no possibility of a significant effect on the habitat and species interests of that site posed by the proposed afforestation. Also, the Boleybrack Mountain SAC (9.9 km distance) has no hydrological connectivity to the site and having regard to the nature and scale of the project at appeal there can be no possibility of any significant effect on its habitats due to this distance and lack of connection. Regards the Union Wood SAC (distance 14.1 km) with qualifying interests of old sessile oak woods, there is also no possibility for a significant effect on these interests. The Bricklieve Mountains and Keishcorran SAC (14 km distance) has conservation objectives primarily relating to upland areas and species that rely on related habitats, the degree of separation and nature and scale of the proposed development would preclude the possibility of a significant effect arising. The Lough Arrow SAC and Lough Arrow SPA at 10.9 km from the site, the SPA qualifying interests are Tufted Duck and Little Grebe and this development is outside the foraging range of these species and unsuitable for their foraging, the SAC interests are hard oligo-mesotrophic waters and the site at appeal has no hydrological connectivity to pose any possible effect. Effects on other European sites can also be discounted based on the degree of separation and the nature and scale of the development. The FAC concluded that this afforestation, alone or in combination with other plans or projects, would not result in the possibility of a significant effect on any European site.

The afforestation on its own (11.41 ha) is substantially sub-threshold for the purpose of mandatory EIA, set at 50 ha in S.I. No. 191 of 2017. The area is rural and agricultural in nature with existing areas of commercial, managed forests in the vicinity. The area is not designated as landscape sensitive and the impact of the proposed afforestation at this location on the landscape would be minor. The area is not considered to contain any protected species or habitats as farmed land and the FAC concluded that it would not have any impact on a European site. The available information shows an afforestation project within Tullynascreen in 2016 and other afforestation projects in neighbouring Garvagh and Greaghnafarna, all of which are well sub-threshold for mandatory EIA and due to separation do not form

one afforestation project with CN81818. The FAC considers that the proposed afforestation would not give rise to any significant effects on water, air, population and human beings. There would be a positive effect on climate in terms of carbon sequestration but, given the nature and scale of the proposal, this would not be significant. There would be visual impact on the landscape which will change as the forestry matures. The proposal would not give rise to any significant effects on the environment having regard to any cumulative impact with the developments referred to by the Department in its response. In conclusion and with reference to the nature, location and small scale of the development the FAC does not consider that this afforestation will have a significant effect on the environment nor that the submission of the EIA Report is required. The FAC are satisfied that the requirements of the EIA Directive (Directive 2011/92/EU as amended by Directive 2014/52/EU) have been met.

The FAC has no role in relation to forestry policy which, under law, is the responsibility of the Minister for Agriculture, Food and the Marine. The FAC can address only the grounds of appeal which relate directly to the licence in question and cannot take account of the overall effects of afforestation on a county as these relate to forestry policy.

Public consultation in the case of the licence application was provided for through: (i) the erection of the site notice, with the location of it marked on the biodiversity map submitted and found in place and compliant with the Department's guidelines on the Department's inspection, (ii) the posting of summary details of the application on the website of the Department of Agriculture, Food and the Marine and (iii) the facility provided for submission/objection to the Department by any party before the Department's decision on the licence application as required under SI 191 of 2017, Forestry Regulations 2017.

The appellants have been provided by the FAC with the full Department's statement on the appeal.

Clear-felling of this project will have to comply with legal requirements in place at that time and cannot be adjudicated upon in this decision.

A condition of the licence at appeal is compliance with Departmental guidelines and requirements for Landscape, Water Quality, Harvesting, Biodiversity and Archaeology. Furthermore, the application of fertilisers and herbicides is subject to Environmental Requirements for Afforestation which exclude application within any aquatic buffer zones. The Department's Guidelines in their *'Forestry Standards Manual; November 2015'* and their other mandatory Guidelines have been developed and informed by relevant research field trials over many years, including HYDROFOR. These provisions are considered adequate in this case. Also, hedgerows and existing trees are to be retained as per the biodiversity map submitted with the licence application. The bio-map shown at the hearing had all hedgerows marked and was considered adequate. In addition, the house on the lands is the property of the applicant.

The Teagasc Technology Update of October 2016 outlined the project *'Estimating the distribution of High Nature Value farmland in Ireland'* (Project dates Jan 2013 — Mar 2016). However, there has been no overall definitive classification and mapping exercise completed on High Nature Value land (HNV) in

the EU and the legislative protection for HNV farmland in Ireland is confined to restrictions on certain activities on protected sites. The site at appeal is not such a site.

In respect of the Meadow Pipit, Cuckoo, Skylark and Snipe, the policy of the Department outlined in its publication '*Using Vegetation to assess Land Suitability, 2016*' is to restrict the afforestation of unimproved or unenclosed land. This policy has the effect of preserving ground-nesting habitat, foraging habitat and associated flora and fauna in non-designated areas. The land within CN81818 is enclosed agricultural land. This policy is respected in this instance.

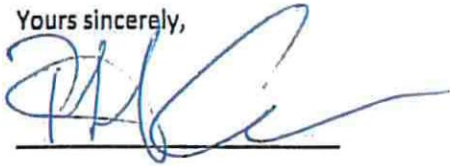
The requirements of the *Forestry Standards Manual* in relation to fire risk have been followed by the Inspector. There is no high-risk bogland connected to the site and the prescribed setback requirements have been met.

The encroachment of deer onto roads and agricultural land is a national issue in relation to which the FAC has no function. The FAC has no role regards TB requirements.

Landowners have the right to afforest their lands, once doing so within the law.

The FAC concluded that the proposal is consistent with Government policy and good forestry practice and would not be detrimental to the amenities of the area.

Yours sincerely,



Pat Coman, on behalf of the Forestry Appeals Committee