



An Coiste um Achomhairc
Foraoiseachta

Forestry Appeals Committee

15 May 2020

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Our ref: FAC 198/2019

Subject: Appeal in relation to afforestation licence CN84186

Dear [REDACTED]

I refer to the appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine in respect of afforestation licence CN84186.

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 CN84186 was granted by the Department on 26 August 2019.

Hearing

A hearing of appeal 198/2019 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, the FAC has decided to confirm the decision of the Minister in respect of licence CN84186 for the reasons set out below.

The proposal comprises 3.09 ha of afforestation at Caherkinallia, Co Clare, the lands are divided into two plots with species area of 2.92 ha, planting is to comprise 85% sitka spruce and 15% birch. Site soils are predominantly podzols in nature, angle notch planting is to be used with mounding. Additional licence conditions include *adhere to forestry and water quality guidelines, and ensure aquatic setbacks are specified in accordance with soil type and slope.*

There is one appeal before the committee and the grounds include that that there was no assessment of the cumulative effects and there is a lacking of proper assessments, and based on the information supplied it was not possible to make a decision which was in compliance with the requirements of the

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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; Edel Grace and Peter Sweetman v An Bord Pleanála, 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 Pleanála.

In response to the appeal the Department of Agriculture Food and the Marine (DAFM) submitted as follows: *At the time this licence was submitted, inspected and assessed, the Forest Service rules governing the appropriate assessment screening were followed. The site was not within any 3kms buffer emanating from a Natura 2000 site. The closest Natura 2000 designation measured directly is 5181m to the south west of the site. It was deemed therefore that no Natura 2000 sites were screened in for Appropriate Assessment i.e. a Natura Impact Statement.* The FAC subsequently sought and received additional information from DAFM which included a list of certain planning permissions/planning applications from County Council planning and An Bord Pleanála, as well as EPA developments, the Clare County Development Plan and other forestry related projects. In what was provided DAFM concluded that the proposed development, considered in combination with other plans and projects would not give rise to significant effects on any Natura 2000 sites.

With regards European sites in the region a screening was undertaken by the FAC and is available for viewing on the public file. On the basis of the evidence before it, the FAC considered the project is not necessary for or connected with the management of any Natura 2000 site. Also while the proposed site has no EPA hydrological connectivity to any Natura site per the EPA website mapping, the DAFM's certification and the applicant's bio-diversity map confirms there is a short length of waterbody along the south of the site's eastern tip but there is no visible connection from the site to any of the EPA identified watercourses, the nearest of which is c.700m away. The site is in the Mal Bay catchment and Inagh (Ennistymon) sub-catchment – a sub-catchment shared with the Cliffs of Moher SPA and Inagh Estuary SAC. The Caherkinallia R. is c. 0.7km from the proposal and has a downstream connection to Inagh Estuary SAC at some 8.7 km. The qualifying interests of the Inagh Estuary SAC include salicornia and other annuals colonising mud and sand, Atlantic salt meadows, Mediterranean salt meadows, shifting dunes along the shoreline with *Ammophila arenaria* (marram grasses) and fixed coastal dunes with herbaceous vegetation, and no likelihood of a significant effect on the SAC arises from the proposal for reason of these qualifying interests, distance, scale and the absence of a realistic conveyance. Of the other European sites, the Cliffs of Moher SPA has sea birds as qualifying interest and no likely effect can be discerned. Ballyteigue (Clare) SAC is on the Aille river system and is fully separate from the proposal by absence of hydro-connection and topography and no likelihood of a significant effect on the SAC or its qualifying interests arise. Moneen Mountain SAC is an extensive European site in East Co Clare with heaths, turloughs and limestone pavements amongst its qualifying interests, again there is no connectivity between it and the proposal and at a distance of 9.3km there is no likelihood of a significant effect from a proposal of this size and nature. EPA turlough database shows no turlough in Caherkinallia TD, also GSI datasets show underlying rock to be grey siltstone and sandstone at this location. The FAC concluded the proposal does not give rise to any likelihood of a significant effect on a European site. In addition, the FAC examined for any possible cumulative effects arising from the proposal when considered in combination with other plans and projects and concluded the proposal does not in-combination with these plans and projects give rise to a likelihood of a significant effect on a European site.



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The FAC is also satisfied that the proposal does not include any features designed to mitigate any effects on a European site, and that the conditions attaching to this licence do not require any measures to avoid or reduce effects on a European site. The FAC concluded that the proposal covered by this licence, either alone or in-combination with other plans or projects, would not result in the possibility of a significant effect on any European site.

The proposal is considerably below the threshold of 50 ha for the mandatory submission of an Environmental Impact Assessment report with the application. Having regard to details on the type and characteristics of the proposal and its location, and the type and characteristics of potential impacts from a development of this nature and scale, the FAC examined the proposal in the context of the EIA Directive provisions. The proposal though proximate to forestry at varying stages of maturity is in an upland setting where forestry is a well established and predominant feature. There are some rural dwellings in the vicinity and the area is otherwise sparsely settled, there are also rural roads west and east of the site but due to elevations and slopes there would be no real effect from this plantation proposal. The planting will increase carbon stored on the site and may have some limited benefits as a habitat. Overall the FAC concluded that this 3.09 ha proposal would not result in the likelihood of a significant effect on the environment or on any European site, taking account of possible cumulative effects, and that formal EIA screening was not required.

The FAC is also satisfied the proposal is in keeping with good forestry practice.

Yours sincerely,

Pat Coman, on behalf of the Forestry Appeals Committee

Screening for Appropriate Assessment for CN84186 & preliminary examination regards EIA

Introduction

Licence 26 August 2019. The proposal comprises 3.09 ha of afforestation at Caherkinallia, Co Clare, the lands are divided into two plots and the actual species area net of bio-diversity is 2.92 ha species (85% sitka spruce and 15% birch). Site soils are predominantly podzols in nature, angle notch planting is to be used with mounding. Zero fertiliser is listed and herbicide usage is included. The certification states High Sensitive Landscape.

Additional licence conditions are;

Adhere to forestry and water quality guidelines

Ensure that aquatic setbacks are specified in accordance with soil type and slope.,

Screening for AA;

European sites within a 15 km distance of the proposal are as follows;

| Site code | Site name | Distance | Conservation Objectives |
|-----------|------------------------------------|----------|--|
| 000994 | Ballyteige (Clare) SAC | 4165.61 | Habitats Molinia meadows on calcareous, peaty or clayey-silt-laden soils |
| 000020 | Black Head-Poulsallagh Complex SAC | 5207.85 | Habitats Reefs / Perennial vegetation of stony banks / Fixed coastal dunes with herbaceous vegetation / Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation/ Alpine and Boreal heaths / Juniperus communis formations on heaths or calcareous grasslands / Semi-natural dry grasslands and scrubland facies on calcareous substrates / Lowland hay meadows / Petrifying springs with tufa formation / Limestone pavements / Submerged or partially submerged sea caves Species Petalwort |
| 000036 | Inagh River Estuary SAC | 5367.92 | Habitats Salicornia and other annuals colonising mud and sand / Atlantic salt meadows / Mediterranean salt meadows / Shifting dunes along the shoreline with Ammophila arenaria / Fixed coastal dunes with herbaceous vegetation |
| 000054 | Moneen Mountain SAC | 9344.72 | Habitats Turloughs / Alpine and Boreal heaths / Juniperus communis formations on heaths or calcareous grasslands / Semi-natural dry grasslands and scrubland facies on calcareous substrates / Petrifying springs with tufa formation / Limestone pavements Species |

| Site code | Site name | Distance | Conservation Objectives |
|-----------|-------------------------|----------|---|
| | | | Marsh Fritillary / Lesser Horseshoe Bat |
| 001926 | East Burren Complex SAC | 12624.28 | Habitats Hard oligo-mesotrophic waters with benthic vegetation of Chara spp. / Turloughs / Water courses of plain to montane levels with the Ranunculus fluitans and Callitriche-Batrachium vegetation / Alpine and Boreal heaths / Juniperus communis formations on heaths or calcareous grasslands / Calaminarian grasslands of the Violetalia calaminariae / Semi-natural dry grasslands and scrubland facies on calcareous substrates / Lowland hay meadows / Calcareous fens with Cladium mariscus and species of the Caricion davallianae / Petrifying springs with tufa formation / Alkaline fens / Limestone pavements / Caves not open to the public / Alluvial forests with Alnus glutinosa and Fraxinus excelsior Species Otter / Marsh Fritillary / Lesser Horseshoe Bat |
| 001275 | Inisheer Island SAC | 13552.64 | Habitats Coastal lagoons / Reefs / European dry heaths / Semi-natural dry grasslands and scrubland facies on calcareous substrates / Lowland hay meadows / Limestone pavements |
| 004005 | Cliffs of Moher SPA | 5261.67 | Birds Guillemot / Kittiwake / Fulmar / Puffin / Razorbill / Chough |

This proposed afforestation site has no EPA hydrological connectivity to any Natura site per the EPA website mapping. However, the DAFM's certification confirms there is an aquatic zone and the applicant's bio-diversity map markings also indicate a short length of watercourse along the south of site's eastern tip but there is no obvious flow visible from the site to any of the EPA identified watercourses, the nearest of which is c.700m away. The site is in the Mal Bay catchment and Inagh (Ennistymon) sub-catchment – a sub-catchment shared with the Cliffs of Moher SPA and Inagh Estuary SAC. Lickeen Lough is 5.2km from the proposal and has no connection, also Goller Lough is at 0.9 km straight line and is upriver from the nearest point of the Cooleen river to which the closest river to the proposal (the Caherkinallia at 0.7km) flows – this would have a downstream connect to Inagh Estuary SAC at some 8.7 km downstream. The qualifying interests of which include salicornia (salt resistant) and other annuals colonising mud and sand, Atlantic salt meadows, Mediterranean salt meadows, shifting dunes along the shoreline with Ammophila arenaria (marram grasses) and fixed coastal dunes with herbaceous vegetation, and there is no likelihood of a significant effect on the SAC from the proposal for reason of these qualifying interests, distance, scale and the absence of a realistic conveyance. Of the other European sites the Cliffs of Moher SPA has sea birds as qualifying interest and no effect can be discerned. Ballyteigue (Clare) SAC is on the Aille river system and is fully separate from the proposal by absence of hydro-connection and landscape and there is no likelihood of a significant effect on the SAC or its qualifying interests. Moneen Mountain SAC is an

extensive European site in East Co Clare with heaths, turloughs and limestone pavements amongst its qualifying interests, again there is no connectivity between it and the proposal and at a distance of 9.3km there is no likelihood of a significant effect from a proposal of this size and nature. EPA turlough database shows no turlough in Caherkinallia TD. Also GSI datasets show underlying rock to be grey siltstone and sandstone at this location. In addition the upland nature of the area separates the proposal site from other features by gradient.

In combination;

In response to the FAC's request for additional information, the Department provided the following; DAFM's iFORIS MapViewer was also consulted on the 19/02/2020, focusing on the area of the Townland(s) containing the project (i.e. Caherkinallia): This process identified various forestry-related projects (either submitted and still under evaluation, or with valid licences / approval in place), as follows:

Afforestation: CN63009 (2013), CN64915 (2013), CN65599 (2013), CN79174 (2017), CN67484 (2014), CN65735 (2013), CN61383 (2013), CN74528 (2016), CN61890 (2013), CN75132 (2016)

Forest Road: CN45776 (2008), CN79079 (2018), CN75239 (2017), CN66081 (2013), CN79079 (2017), CN85378 (2020)

Felling Licence: TFL00293519 (2019), TFL00127718 (2018), TFL00448019 (2020), TFL00399619 (2019), TFL00002217 (2017)

Coillte Felling Licence: CE01-FL0036 (2017), CE01-FL0198 (2020), CE01-FL0064 (2017), CE01-FL0042 (2017), CE01-FL0032 (2017), CE01-FL0087 (2018), CE01-FL0185 (2019), CE01-FL0024 (2017), CE01-FL0145 (2019)

The response also set out for a number of planning permissions. The FAC notes all are relate to relatively minor private dwelling extensions or private garage builds, one relates to an access widening for a forest road, and are not considered works to which the proposal would add to create a significant effect on any of the European sites listed due to distance and connectivity.

Of these the FAC has noted from publicly available web-sites that CN85378 (1030m) and CN79079 (140m) are within Caherkinallia as is felling licence CE01-FL0198 (19.94 ha). Of the afforestation those at Slievenagry TD are at some remove from Caherkinallia (CN64915, CN65599, CN79174). There have been significant afforestation licences within Tooreen which is one townland removed to the east of Caherkinallia (CN67484 19.69 ha and CN65735 16.36 ha) and these were in 2013 and 2014. CN61383 10.34 ha in Ballyalla and CN61890 6.92 in Carrowreagh both to south of Caherkinallia are 2012 projects, and CN75132 15.03 Carrowreagh is 2016, the Boghil licence CN63009 is at a significant remove from the proposal and of no obvious relevance. The environs of Caherkinallia contain mature forestry and normal management of such stands will involve thinning and clearfell, the felling licences set out are part of such a process, of the felling licences TFL00002217 is for thinning of 10.4 ha in Carrowreagh which is south of Caherkinallia.

From the above the proposal does not in-combination with these plans and projects give rise to a likelihood of a significant effect on a European site.

The FAC is also satisfied that the proposal does not include any features designed to mitigate any effects on a European site, and that the conditions attaching to this licence do not require any measures to avoid or reduce effects on a European site. The FAC concluded that the proposal covered by this licence, either alone or in-combination with other plans or projects, would not result in the possibility of a significant effect on any European site.

Preliminary examination regards EIA

The proposal is considerably below the threshold of 50 ha for the mandatory submission of an Environmental Impact Assessment report with the application. Having regard to details on the type and characteristics of the proposal and its location, and the type and characteristics of potential impacts from a development of this nature and scale, the FAC examined the proposal in the context of the EIA Directive provisions. The proposal though proximate to forestry at varying stages of maturity is in an upland setting where forestry is a well established and predominant feature, and although there are a number of dwellings close by (circa 7) these are by public roads and reasonably elevated and the immediate area is otherwise sparsely settled. There are rural roads west and east of the site but due to elevations and slopes there would be no real effect from this plantation proposal. The planting will increase carbon stored on the site and may have some limited benefits as a habitat. Overall the FAC concluded that this 3.09 ha proposal would not result in the likelihood of a significant effect on the environment or on any European site, taking account of possible cumulative effects, and that formal EIA screening was not required.

Pat Coman, on behalf of the FAC 06 05 2020