



**An Coiste um Achomhairc
Foraoiseachta
Forestry Appeals Committee**

[REDACTED]
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22 May, 2020

Subject: Appeal FAC 207 - 2019 - CN83488 – Application in respect to afforestation licence CN83488.

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 licence CN83488 was issued by the Department on 22 August 2019.

Hearing

A hearing was conducted by the FAC on the 13th May 2020.

In attendance at the hearing:

FAC Members: Mr. Des Johnson (Chairperson), Mr. Pat Coman, Mr Vincent Upton & 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 CN83488 for the reasons set out below.

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The proposal comprises 7.04 ha of afforestation in Killurin, Co Offaly. Planting to consist of 85% sitka spruce and 15% additional broadleaves. The soil type is mineral peat.

The licence was issued with the following conditions:

- Plant the 15% broadleaves on the northern boundary and along the internal agricultural drains.,
- Retain mature broadleaves,
- Adhere to Environmental Requirements for Afforestation,
- All guidelines to apply

The grounds of appeal were;

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 to the FAC dated 17th December 2019 DAFM stated :-

"There is no hydrological connection to the above Natura Site. The standard operating procedure for AA screening was applied at the time of approval".

Before making its decision the FAC sought a report from an independent consultant and in particular a stage 1 screening for appropriate assessment in accordance with the provisions of Article 6 of the Habitats Directive (92/43/EEC). The report dated 7 May 2020 was considered by the FAC in coming to its decision and a copy of the report is contained in the public file. The proposal is not related to or necessary for the management of any European sites.

The Report identified 6 European sites within 15 km. The closest site is the Charleville Woods SAC which is 4km from the proposed site. The Qualifying Interests are Habitats of Old Sessile Oak Woods and the Desmoulins Whorl snail. The other European sites are in order of proximity the Clonaslee Eskers (4.9 km) and Derry Bog SAC (, The River Barrow and Nore SAC which lies at a distance of 6.1 km from the proposal lists the Fresh Water Pearl Mussel, and Nore Pearl Mussel amongst the Qualifying Interests. The proposal lies in the Shannon Catchment area and there is no hydrological connectivity with the River

Barrow River Nore SAC or any of the other listed European sites. The remaining European sites are the Slieve Bloom Mountains SAC (7.5 km), Clara Bog SAC (12.7 km), and the Slieve Bloom Mountains SPA which lists the Hen Harrier as a Qualifying Interest.

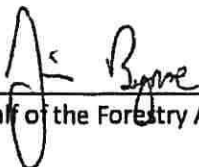
The area is rural with sparse housing in the vicinity. There are no conditions specific to any European site on the licence. While there is existing forestry in the area it is dispersed. Having regard to the nature scale and location of the proposed planting, the distance to European sites and the conservation objectives of the sites, the FAC concurred with the findings of the consultant's report and concluded that the proposal alone, or in combination with other plans or projects would not result in the possibility of a significant effect on a European site arising.

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 proposal is significantly sub-threshold for EIA at 7.04 ha. The land use is currently agricultural and the proposal is in a rural area. There are no designations on the site and the existing hedgerows will be maintained. A 5m setback from all internal field drains is to be observed. The site lies in an area designated as potentially acid sensitive by the DAFM and The Acid Sensitivity Protocol was followed. There are a number of planning permissions sought in the area over the last 5 years mostly in regard to one-off housing. While there are plantations in the area, they are modest in size and separated from the proposal by agricultural land. Approval was granted for licence CN80504 comprising of afforestation on an area of 10.13 ha in the same townland as the proposal. Having regard to the scale of the proposal and its location, the FAC concluded that the proposal would not on its own or in combination with other plans and projects result in any likelihood of a significant effect on the environment.

The FAC considered the proposal is consistent with Government policy and good forestry practice.

Yours sincerely


on behalf of the Forestry Appeals Committee

APPLICATION FOR TECHNICAL APPROVAL FOR AN AFFORESTATION LICENCE

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

TOWN LAND.

Killurin

COUNTY.

Offaly

[REDACTED]

[REDACTED]

COUNTY.

MAYO

Proposal:	Afforestation
Species:	Sitka spruce Broadleaf (not identified)
Ground preparation method:	Weed removal, ripping, mounding
Planting Method:	Slit
Fertiliser :	Granulated rock phosphate
Weed Control:	Herbicide.
Access:	The Application states that a road access is provided: Google Earth Maps show a side adjoining the N.E
road/laneway corner of the site	

Setback.	The Licence requires a mandatory 20m. aquatic setback
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SITE

Area:	7.04 ha.
Soil Type:	Mineral, Peat.
Geology:	Unknown
Elevation:	90.0 - 110.0
Existing land use:	Agricultural; mixed farming
Vegetation	Grass/rush
Boundaries:	Google Maps do not show site boundaries with any clarity; photos submitted by the applicant are of poor quality and do not

provide any help in that regard.

Adjoining land uses:

The site is adjoined to the east, west and south by belts of afforestation; to the north it is adjoined by agricultural land. At its N.E corner the site is accessed by a side road

SURROUNDING ENVIRONMENT

Existing Land Uses:

Google Earth Maps show a mix of agricultural land, worked bog and a patchwork of afforestation belts

Settlement Pattern.

The area is characterised by a strong pattern of roadside ribbon development, and farmhouses back from the road. The nearest settlement of Killurin, approx 2.0 kms to the N.W. The town Lies approx 8.5

set

is the village
kms by road
of Tullamore
kms north of Killurin

Other Forestry in Area.

Google Earth Maps show a dispersed pattern of small afforestation in

belts of
the area.

Proposed Development in the Area.

Those consist mainly of small domestic developments which are detailed in the Forest Service's response to the F.A.C.

LICENCE DETAILS



Date of Licence Application:

Date not stated on applicants
Licence application; the
Division

Forestry
statement to the F.A.C
records the application as having
been submitted on the 28.02.2019;

Date of Licence Issue:

22.08.2019

General Licence Conditions.

- End date for work completion.
- Compliance with Operational Proposals and Specifications
- Compliance with Dept. Guidelines re Landscape, Water Quality, Harvesting, Biodiversity and Archaeology
- Compliance with Ecological Survey and Management Plan as submitted
- Licence issued subject to terms and conditions of Forestry Standards and procedures Manual.

Site Specific Licence Conditions

- Plant 15% broadleaves on northern boundary and along internal agricultural drains
- Retain mature broadleaves
- Adherence to Environmental Requirements for Afforestation
- All Guidelines to apply

REFERRALS

Offaly Co. Co.

No objection

GROUND OF APPEAL.

08.04.2019

On the basis of information submitted it is not possible to grant a Licence which would be in compliance with the E.I.A and Habitats Directives having regard to judgements of the CJRU in the following cases:

C-258/11, C-164/17, C- 323/17, C-461/17

23.04.2019

There has not been any assessment of cumulative effects.

(N.B. The Inspector Certification - Pre Approval document @ P.7 describes the appellant's objection as "Spoil/Block Landscape, countryside, views, scenic areas." That would appear to be incorrect)

DAFM SCREENING .

The Screening conclusion @ P.9 of the Inspector Certification - Pre Approval document states that

"The zone of influence centred on this application does not overlap with any Natura site. Therefore due to spatial separation this project is screened out for the purpose of Appropriate Assessment" The inspector therefore concluded that as there is "no possibility of a significant effect on any Natura site, Appropriate Assessment is not required"

DAFM STATEMENT TO THE FORESTRY APPEALS COMMITTEE (18.11.2019)

The Statement was made on foot of both a field and desk assessment

The desk assessment identified all Natura designations within 15km of the site viz:

Charleville Wood SAC (4 km distant)
Slieve Bloom mountains SPA (5km distant to the south)
Clara Bog SAC
Clonaslee Eskers and Derry Bog SAC
River Barrow and River Nore SAC

The Statement concluded that there should not be any change to the original decision to grant a Licence on the basis of :

- The absence of any hydrological connection between the project location and the nearest Natura site - Charleville Woods - the absence of any hydrological pathway between the project location and any SAC was also confirmed during a field inspection. The Hen Harrier protocol set out in the Forestry Standards Protocol was also applied in relation to the Slieve Bloom Mountains
- Results derived from assessments of (i) other licensed activities in the area, (ii) nutrient sensitive areas, (iii) surface and groundwater vulnerability, (iv) the WFD Priority Areas for action, (v) drinking water sources - those assessments having been carried out by way of the EPA AA Screening Tool, EPA EDEN App and the EPA online licensing system (Note: that would appear to include the EPA, IPC and waste licensing online system - cf Inspector's application notes dated 15.11.2019)
- Results derived from the online Planning System.
- Consideration of Referral responses, water sampling results, and Third Party submissions
- Considerations of the extent of broadleaf and commercial conifer forestry planted in the area and the age classes of same.

NATURA 2000 SITES

Charleville Wood SAC

Lies less than 4 kms as the crow flies ,north of the project location. Qualifying Interests are Habitats of Old Sessile Oak Woods and a Snail Species (Desmoulin's Whorl).

Conservation Objective is to maintain or restore the favourable conservation condition of the Annex 1 Habitat and/or the Annex 11 Species for which the SAC has been selected

Clonaslee Eskers and Derry Bog SAC

Lie approx 5 kms south of the project location. Qualifying Interests are Alkaline Fen Habitats and a Snail Species (Geyer's Whorl)

Conservation Objective is to restore the favourable condition of Alkaline Fens in the Esker and Bog as defined by a number of attributes and targets.

Slieve Bloom Mountains SAC

Lie approx 6.25 kms to the south. Qualifying Interests are Habitats (N. Atlantic wet heaths with Erica tetralix, Blanket Bogs, and Alluvial Forests)

Conservation Objective is to restore the favourable conservation condition of the above Habitats as defined by a number of attributes and targets.

Slieve Bloom Mountains SPA.

The qualifying Interest here is the Hen Harrier

Conservation Objective is to restore the favourable conservation condition of the Hen Harrier

Rivers Barrow and Nore SAC

Lie approx 7 kms to the S. East. Qualifying Interests are Habitats(Estuaries, Mudflats, Reefs, Salicornia, Atlantic and Mediterranean Salt Meadows, Water courses, with specified vegetation, European Dry Heaths, Hydrophilous tall herb fringe communities, Petrifying Springs, Old sessile oak woods, and Alluvial Forests. Species listed are Freshwater and Nore Pearl mussel, Desmoulin's Whorl Snail, Otter, Salmon, White Clawed Crayfish, Killarney Fern, Twaite Shad, Sea, Brook and River Lamprey.

Conservation Objective is to maintain and or restore the favourable conservation condition of the Habitats and/or Species for which the SAC has been selected as defined by a number of attributes and targets.

Clara Bog SAC

Lies approx 13kms to the N.W. Qualifying Interests are Habitats (Semi Natural Dry grasslands, Active and Degraded Raised Bogs, Bog Woodland, and Depressions on Peat Substrates of Rhynchosporion)

Conservation Objective is to restore the favourable conservation condition of Active raised bogs in Clara Bog, and also that of semi natural dry grasslands and scrubland facies as defined by a list of attributes and targets.

Based on an examination of the mapping system - gis.epa.ie - it would appear that the project site does not have any hydrological connection, either by way of stream or river, with any of the Natura 2000 sites listed above. The nearest stream to the site appears to rise approx 1 km west of the southern boundary of the site; the stream then flows in a northerly direction ultimately joining the Clodiagh River some 4.5 kms to the N. The

Clodiagh River continues to flow northwards along the western boundary of Charleville Wood. .

EIA PRELIMINARY EXAMINATION/SCREENING

Article 13(2)(a) of the the 2017 Forestry Reg's, in compliance with the EIA Directive requires that an EIA be carried out in respect of an application for a licence for afforestation *which would involve an area of 50 ha. or more*. The proposed afforestation area in the current case is 7.04 ha and therefore falls below the mandatory criteria.

Article 13(2) (c) of the same Reg's however requires that an EIA be carried out in respect of an application for a licence for afforestation ***which while it does not exceed an area of 50 ha would be likely to have significant effects on the environment taking into account the criteria set out at Schedule 3 of the 2017 Reg's.*** (Annex III of the EIA Directive) Those criteria are identified as: 1.Characteristics of projects, 2.Locations of projects, and 3.Type and Characteristics of Potential Impacts.

Having regard to the information set out in the Forest Inspectors Pre Application Approval Document and having regard also to information derived from Google Earth and gis.epa.ie I consider that an EIAR is not warranted in the current case

APPROPRIATE ASSESSMENT

The purpose of A.A is to assess in a focused and detailed manner, the impact of the proposed afforestation on the integrity of the identified SAC,s and SPA.

The A.A process consists of a series of sequential steps which are set out below - Screening, Stage 1(a) and 1(b) and Stage 2, Appropriate Assessment

Screening, Stage 1(a)

The issue here is whether the project is directly connected with or necessary to the management of the European site(s).

In the current case the project is not directly connected with or necessary to the management of a European site(s). Screening therefore proceeds to Stage 1(b) below

Stage 1(b)

The first issue for determination here is whether the project is likely, on an **individual basis**, to have a significant effect on any Natura 2000 site having regard to the conservation objectives of that site.

Given the modest area of the project site, its 4k (approx) distance from the nearest SAC - Charleville Wood - the Qualifying Interests and Conservation objectives for Charleville Wood, and the absence of any pathway, hydrological or otherwise between the site and the nearest SAC it is unlikely that the project will in an individual capacity have any significant effect/impact on Charleville Wood; I consider that application of the same criteria to the remaining above mentioned SAC's and the Slieve Bloom SPA,would also likely lead to a similar outcome.

The 2nd issue here for determination is whether the project is likely to have a significant effect in **combination with other plans and projects** on the Natura 2000 sites, again having regard to their conservation objectives.

In that regard I note that

(i) although the proposed project itself is modest in scale, it is incremental in nature, and will therefore result in further consolidation of those belts of coniferous planting between the Slieve Bloom SAC/SPA to the south and Tullamore to the north. However the belts are well dispersed and modest in scale (Cf Google Earth maps) and are therefore unlikely to result in any significant effects/impacts on surrounding SAC's or SPA. The inspector's report to the FAC also stated that the extent of broadleaf and commercial conifer forestry planted in the area and the age classes of same were a factor in determining that the Licence grant should stand.

(ii) The Inspector's report to the FAC also referred to " Results derived from assessments of (i) other licensed activities in the area, (ii) nutrient sensitive areas, (iii) surface and groundwater vulnerability, (iv) the WFD Priority Areas for action,(v) drinking water sources" ...and "Results derived from the online Planning System". The inspector therefore clearly assessed the cumulative impacts of the proposed project in arriving at his conclusion that the Licence grant should stand.

(iii) Finally I consider that conditions attached to the Licence are of a general nature which relate to best practice methods and are not site specific i.e. they are not aimed at avoiding or reducing significant adverse effects and cannot therefore be categorised as mitigation measures
I therefore conclude that the proposed project is unlikely to have a significant effect in combination with other plans and projects on the integrity of any of the Natura 2000 sites having regard to the conservation objectives of those sites.

CONCLUSION

In regard to an EIAR requirement for the proposed project I consider that

- given its modest scale which falls significantly below the class threshold as set out in the Directive,
- Its location which is removed from any Natura 2000 sites
- The absence of any pathway to any Natura 2000 site or other sensitive location or feature
- The absence of any significant waste , emission or pollutant generated by the project. and
- given also the attached general licence conditions,
an EIAR is unlikely to be warranted in the current case

In the matter of AA, on an individual basis (Screening Stage 1b)the proposed project is unlikely to generate a need for progression to Stage 2 of the AA process, for the reasons I have already noted.

In regard to Stage 1(b) - cumulation with other projects- I consider having regard to the steps taken by the inspector in that regard - as listed in his submission to the FAC - the proposed project is unlikely on a cumulative basis to result in any significant -let alone significant adverse-effects/impacts on the integrity of any of the nearby Natura 2000 sites having regard to the conservation objectives of those sites.

On the basis of the above conclusions I consider that there is not any requirement to proceed to Stage 2 of the Appropriate Assessment process

Mary Cunneen
07.05.2020

