



**An Coiste um Achomhairc
Foraolseachta**

Forestry Appeals Committee

28 May 2020

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Our ref: FAC 399/2019

Subject: Appeal in relation to afforestation licence CN84627

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine in respect of afforestation licence CN84627.

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 CN84627 was granted by the Department on 21 November 2019.

Hearing

A hearing of appeal 399/2019 was conducted by the FAC on 20 May 2020.

FAC Members:

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

Decision

The Forestry Appeals Committee (FAC) considered all of the documentation on the file, including application details, processing of the application by the Department of Agriculture Food and the Marine (DAFM), the grounds of appeal, and a consultant's report sought by the Committee, before deciding to confirm the decision in respect of this licence (Reference CN84627) for the following reasons:

Proposal is for 10.19 ha of afforestation and 930m of stock fencing at Aghanoran, Co Longford, and a change of land use arises from agricultural to forestry. The proposal consists of five plots divided by a public road, plot two (0.69ha) is to comprise 0.14 ha of unplanted bio-diversity area and the remainder planted with Alder, Pedunculate Oak and Holly, plot four (0.21ha) to be planted with Alder only, and planting is otherwise with Sitka Spruce (85%) and broadleaves (15%). The application states fertiliser is not required and some weed control is proposed. The project bio-map refers to silt

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collection pond at lowest end to lake, however in the licence before the FAC this part of plot two is restricted to a bio area with no planting per the conditions of the licence. This silt trap could not be considered as a measure to avoid or reduce any likely effect on a Natura 2000 site in this instance. The site is certified as not prone to flooding and drainage is not required. There is a large quantity of existing hedgerows on site which must be retained. There is no mapped EPA watercourse on the proposal site and no aquatic zone is indicated on the application bio-map. There were three referrals of the proposal by DAFM, these were to Longford County Council, An Taisce and the National Parks and Wildlife Services and each replied from which the change within plot two arose. The DAFM issued a licence on 21 November 2019 subject to standard conditions and that no planting is permitted within a pNHA area of Plot 2 / Parcel 084.

There is a single appeal against the decision to approve the licence. The grounds contend that based on the information supplied it was not possible to make a decision which would be in compliance with the requirements of the EU Habitats and EIA Directives, and having regard to the following judgements of the CJEU; Case C-258/11, Case C-164/17, Case C-323/17 and Case C-461/17. The grounds included 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."

The DAFM's response to the appeal included that the application was screened for Appropriate Assessment with regards Natura sites within 15km of the proposed site. Also, the proposal area does not directly connect with the adjacent water-body but is separated (approximately 20m) by an unplanted area which is designated as a pNHA and excluded from planting on recommendation from the NPWS and in the interest of sensitive landscaping. The FAC noted that there are no conditions on the licence designed to mitigate possible effects on a European site.

The FAC sought 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 17 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 report identifies and considers seven European sites the boundaries of which lie, at least in part, within 15 kilometres of the project lands. These are Lough Oughter and Associated Loughs SAC to the north at 14.17 km, Ardagullion Bog SAC, to the south at 13.03 km, Moneybeg and Clareisland Bog SAC to the southeast at 11.88 km, Derragh Bog SAC to the southeast at 11.73 km, Lough Oughter Complex SPA to the north at 13.99 km, Lough Sheelin SPA to the southeast at 11.93 km and Lough Kinale and Derragh Bog SPA to the south-southeast at 10.2 km. The report states ordinance survey mapping shows a watercourse over part of plot three and plot four, and the project lands drain into two different sections of Lough Gowna, which is in the Erne catchment. Lough Gowna drains northwards to the Lough Oughter complex of lakes, and the hydrological distance to the SAC is estimated at 22 to 23 km. The report continues that the qualifying Interests of the SAC are natural eutrophic lakes with Magnopotamion or Hydrocharition type vegetation, Bog woodland (priority habitat) and the otter. The conservation objective is "to maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected". The report concludes the proposed development would not have any effect on the



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qualifying interests for the Lough Oughter and Associated Loughs SAC and is not likely to have any significant effect on the SAC. The report includes that a screening for Appropriate Assessment is done to establish impact or likely impact on Sites of Community Importance or Natura 2000 sites, and Lough Gowna does not fall into the category of sites in question. The report includes a screening for any in-combination effects and concludes there is no likelihood of a significant effect on a European 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. The FAC adopts the report's conclusion and concludes that the proposed development is not likely to have any significant effect on any of the Natura sites referred to and it is not necessary to carry out an Appropriate Assessment as referred to in Article 6(3) of the EU Habitats Directive.

The FAC also considered the examination of the proposal regarding the requirements of the EIA Directive including the consideration of the broader landscape and possible impacts of the proposal, which is sub-threshold for mandatory EIA. The FAC is satisfied that the examination meets the requirements of the EIA directive and agrees with and adopts the Consultant's findings. The FAC concluded that the proposed afforestation would not be likely to have significant effects on the environment and the carrying out of EIA is not required.

In confirming the decision to approve the licence, the FAC concluded that the proposed development accords with Government Policy and Good Forestry Practice.

Yours sincerely,

Pat Coman, on behalf of the Forestry Appeals Committee

FAC Case Ref. No. 399/2019

DAFM Case Ref. No. CN84627

Details of application:

The application is for the afforestation of an area of 10.19 hectares of land in the townland of Aghanoran in Co. Longford.

The plans indicate the overall area for planting divided into 5 plots. Plot 1 (881) with an area of 3.53 hectares would be planted with Sitka Spruce and Additional Broadleaf trees. Plot 2 (084), with an area of 0.69 hectares, would be planted with a mixture of trees including Alder, Pedunculate Oak, Birch and Holly. Plot number 3 (422), with an area of 4.5 hectares, would be planted with Sitka Spruce and Additional Broadleaves. Plot number 4 (430), with an area of .21 hectares would be planted with Alder trees. Plot number 5, with an area of 1.17 hectares would be planted with Sitka Spruce and Additional Broadleaves. The information submitted indicates that the 15% Broadleaf component will be provided adjacent to roads and to remaining scrub.

It is stated in the application that the site is not prone to flooding and that drainage is not required. It is also stated that fertilizer is not required and that some weed control is proposed.

The licence issued requires that no planting takes place in plot number 2 i.e. the plot adjacent to Lough Gowna at the eastern edge of the lands.

Location and details of project lands:

The lands are located in a rural area in north Co Longford about 8 kilometres to the north of the town of Granard. The lands are located very close to Lough Gowna and very close to the boundary with Co. Cavan. The boundary runs through the lake which is located both to the east and north of the project lands.

The project lands have frontage onto 2 minor cul-de-sac local roads which end a short distance to the north of the lands. The OS maps indicate a local high point on the most easterly of the 2 roads in question. The 300-foot contour encompasses a section of this road and a small section of adjacent lands near the northern end of the project lands. Ground levels dip downwards from the road towards Lough Gowna to the east and towards a stream to the west which is indicated on the OS maps but not on the BIO map submitted with the application. The OS maps indicate this stream draining a poorly drained area to the south of the section of lands located between the 2 local roads. The stream is indicated, on the OS maps, as flowing towards the north to the main body of Lough Gowna. The ground level rises upwards again, from the stream, towards the road to the west. The stream referred to is located in part within plot 3 (422) and appears also to drain plot 4 (430) as indicated on the plans submitted.

The predominant land use in the area is agriculture. There is also some forestry in the wider area e.g. a relatively large area located beside Lough Gowna at Derrycassin Woods to the southwest and another relatively large plantation located beside Lough Gowna to the west. Both of these are about 2.5 kilometres from the project lands.

There are significant hedge rows at the edges of the many fields which make up the project lands. It also appears that there were 2 houses located on the lands in the past. There are trees at the locations of these former houses.

There are some houses on the local road network in the area although the area is not intensively developed with one-off housing.

Decision of DAFM:

The Department decided to grant approval and issue a licence. The licence was subject to 13 conditions. Most of the conditions are of a standard variety and relate to either the grant application or require compliance with standard Forest Service standards and requirements for afforestation. Condition number requires, inter alia, the no tree planting shall be carried out on plot number 2 (084). This plot has an area of 0.69 hectares and it is located at the eastern edge of the project lands adjoining Lough Gowna.

(The decision of the Department was taken following the receipt of responses from An Taisce, the Department of Culture, Heritage and the Gaeltacht and Longford Co Council. An Taisce raised the issue of the percentage of the lands being retained for biodiversity purposes, the Department of Culture etc. submitted that the lands contained areas which it considered were of biodiversity and ecological importance and Longford Co. Council submitted that the location of forest roads should be indicated at this point in time rather than being left for determination at a later stage).

Grounds of appeal:

It is submitted that based on the information supplied it was not possible to make a decision which would be in compliance with the requirements of the EU 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."

It is also submitted that, since 1989, it is necessary to assess the cumulative effects of the project with other plans and projects.

DAFM response to grounds of appeal:

It is submitted that Afforestation Licence Application CN84627 was processed according to all Forest Service Guidelines. All responses from referral bodies were read and considered. The proposed afforestation application area was field inspected to ensure compliance with all Forest Service Guidelines.

The application was screened for Appropriate Assessment and a number of Natura 2000 designated areas were noted within 15 km. The sites in question are Lough Kinale and Derragh Bog SPA (10km away with no connecting pathway), Derragh Bog SAC (11.71 km away with no connecting pathway), Lough Sheelin SPA (11.91 km away and with no connecting pathway), Moneybeg and Clareisland Bog SAC (12.4km away with no connecting pathway), Ardagullion Bog SAC (13km away with no connecting pathway) and Lough Oughter SAC/SPA (14.3km away)

The proposed afforestation area does not directly connect with the adjacent waterbody but is separated (approximately 20m) by an unplanted area which is designated as a pNHA. This pNHA area was excluded from the planting area on recommendation by the National Parks and Wildlife Service and in the interest of sensitive Landscaping. The unplanted pNHA area may be excluded or retained as a bio-diversity area.

The proposed afforestation application was considered for any 'in combination' effect along with other forestry and non-forestry projects in the immediate vicinity. The online planning systems for Longford County Council and An Bord Pleanála were consulted on the 20th November 2019. Non-forestry projects identified in the vicinity of the project, i.e. in the Townland of Aghanoran include: - New dwellings (1591, 10215). Iforis was checked for other forestry projects in the immediate vicinity but none were noted. The proposed Afforestation area will have no significant effect on any Natura 2000 designated area or any associated qualifying interests, either directly or in combination with other projects.

In reviewing the Appropriate Assessment Screening process for this afforestation application, the inspector recommends that the application continues to be Screened Out and the licence for afforestation be issued.

Screening for Appropriate Assessment:

There are 7 Natura 2000 sites located, at least in part, within 15 kilometres of the project lands. These are

Lough Oughter and Associated Loughs SAC located to the north, at the nearest point about 14.17 kilometres from the project lands.

Ardagullion Bog SAC, located to the south, at the nearest point, about 13.03 kilometres from the project lands.

Moneybeg and Clareisland Bog SAC located to the southeast, at the nearest point, 11.88 kilometres from the lands.

Derragh Bog SAC located to the southeast, at the nearest point, about 11.73 kilometres from the project lands.

Lough Oughter SPA located to the north, at the nearest point, about 13.99 kilometres from the project lands.

Lough Sheelin SPA located to the southeast, at the nearest point 11.93 kilometres from the lands and

Lough Kinale and Derragh Bog SPA located to the south-southeast, at least 10.2 kilometres from the project lands.

My distances are slightly different from those given in the Department's response to the grounds of appeal but the differences are minor and of no significance in the assessment.

The Lough Oughter and Associated Loughs SAC is located to the north at a minimum distance of over 14 kilometres from the subject lands. Lough Gowna is in the Erne catchment and drains northwards to the Lough Oughter complex of lakes. The hydrological distance to the SAC is well over 20 kilometres. I estimate it is about 22/23 kilometres. The project lands also drain into 2 different sections of Lough Gowna.

The Qualifying Interests of the SAC are Natural eutrophic lakes with Magnopotamion or Hydrocharition, type vegetation, Bog woodland* and otter Lutra Lutra * denotes a priority habitat

The conservation objective is "To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected"

Having regard to the distance of the SAC from the project lands and in particular the hydrological distance I consider that the proposed development would not have any effect on the qualifying interests for this SAC. It can be concluded that the project applied for is not likely to have any significant effect on the SAC.

Ardagullion Bog SAC is located to the south, at the nearest point, about 13.03 kilometres from the project lands. This SAC is located in the River Shannon catchment. There is no hydrological connection from the project lands to this SAC.

The qualifying interests of this site are, Active raised bogs, Degraded raised bogs still capable of natural regeneration and Depressions on peat substrates of the Rhynchosporion. In the absence of any hydrological connection from the project lands the development will have no impact on the water regime or flow at the SAC. It would, accordingly, have no effect on the qualifying interests for the site. The project is not likely to have any significant effect on the Ardagullion Bog SAC.

The Moneybeg and Clareisland Bog SAC is located to the southeast, at the nearest point, 11.88 kilometres from the project lands. Similar to the Ardagullion SAC this SAC is also located in the Shannon catchment and there is no hydrological connection from the lands where tree planting is proposed. The qualifying interests for this SAC are the same as for Ardagullion Bog. For the same reasons as stated in the previous paragraph the development is not likely to have any significant effect on the Moneybeg and Clareisland Bog SAC.

The Derragh Bog SAC is located to the southeast, at the nearest point, about 11.73 kilometres from the project lands. This bog-land SAC like the 2 previous ones is also located in the Shannon river catchment. The qualifying interests are Degraded raised bogs still capable of natural regeneration and Bog woodland* * denotes a priority habitat. For reasons similar to the 2 SACs referred to above the afforestation project in question is not likely to have any significant effect on this SAC.

The 3 SPAs referred to above i.e. Lough Oughter SPA, Lough Sheelin SPA and Lough Kinale and Derragh Bog SPA are all located more than 10 kilometres from the project lands. The special interests for the 3 sites combined are, A005 Great Crested Grebe *Podiceps cristatus*, A059 Pochard *Aythya farina*, A061 Tufted Duck *Aythya fuligula*, A067 Goldeneye *Bucephala clangula*, A038 Whooper Swan *Cygnus Cygnus*, A050 Wigeon *Anas penelope* and Wetlands and Water-birds.

The conservation objectives for the sites is: To maintain or restore the favourable conservation condition of the wetland habitats as a resource for the regularly-occurring migratory water-birds that utilise them.

Having regard to the distance of the project lands from the SPAs in question, to the special interests of the SPAs and to the presence of a significant amount of similar lands in the area generally, I consider that the proposed development would not be likely to have any significant effect on the SPAs in question.

Lough Gowna is indicated as being a Natural Heritage Area (NHA) on the EPA's mapping of sites of ecological interest. It is not, however, indicated as such in the National Parks and Wildlife Services inventory of such sites. Lough Gowna is included in an inventory of proposed Natural Heritage Areas prepared in the 1990s. A screening for Appropriate Assessment is done to establish impact or likely impact on Sites of Community Importance or Natura 2000 sites. Lough Gowna does not fall into the category of sites in question. The eastern part of the site which was included in the application i.e. plot 2 (084) is located in the pNHA. Condition number 13 requires that this area not be planted. This, if incorporated into the Biodiversity area, would appear to overcome An Taisce's argument about the size of the Biodiversity area in comparison to the Forest Service's policy. This issue is not however directly relevant to the issue of screening for Appropriate Assessment.

The Department indicates in its response to the appeal that there are no other licences for forestry development in the vicinity. On checking recent planning permissions for development in the area I find very few, with permissions only for a few one-off houses on the local roads to the south and southwest. There are also some permissions for farm yard development in the wider area. None of the permissions are in the immediate vicinity of the project lands. I consider that, of itself or in-combination with other projects in the general area, the proposed afforestation would not be likely to have any significant effect on any Natura site.

In coming to my conclusions as set out in the previous paragraphs, I have not considered the normal forestry good practices referred to in the documentation. Neither have I considered the omission of plot number 2 as required by condition number 13 in the Department's licence. I consider, however, that compliance with the various guidelines etc referred to would re-enforce my conclusion. I also consider that the guidelines and standards referred to are designed to protect the local

environment as they are general standards for all afforestation projects and are not designed to prevent any significant effect on the Natura sites in question here.

Having regard to my conclusions as set out above I consider that the proposed development is not likely to have any significant effect on any of the Natura sites referred to and it is not necessary to carry out an Appropriate Assessment as referred to in Article 6(3) of the EU Habitats Directive.

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 111 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. Afforestation is not 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 area proposed to be planted in the current case is only slightly over one fifth of the area for which EIA would be mandatory. The landscape is not designated as being of special or exceptional scenic amenity importance or value in the current Co. Longford development plan although the plan notes that the Lough Gowna Complex was included in the An Foras Forbartha inventory of outstanding landscapes in Ireland in 1977. The area, where the lands are located, is indicated, in Annex 4, of the development plan, as the Northern Drumlin Lakeland landscape unit. This area is described as generally of low to medium sensitivity but of high sensitivity near the lakes.

There are no particularly vulnerable receptors which might be impacted upon in the near vicinity. There are no sites of archaeological importance (National Monuments) or protected structures close by. The nearest National Monument is a crannog located in Lough Gowna about 400 metres to the northeast. The afforestation proposed would have no impact on this monument.

I do not consider that the proposal would have a significant impact on the wider landscape. I also consider that it would not give rise to significant air or water pollution. Compliance with good forestry practice would mitigate any localised problems likely to arise.

I consider that the project proposed 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 the preliminary screening carried out above.

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

17/5/ 2020

