



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

28th May 2020

Subject: Appeal FAC302/2019 regarding licence CN83576

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

Licence CN83576 for 10.43 hectares of afforestation at Annagannihy, Co Cork was issued by the Department of Agriculture, Food and the Marine on 17th October 2019.

Hearing

A hearing of appeal FAC302/2019 was held by the FAC on 27th May 2020.

FAC Members: Mr. Des Johnson (Chairperson), Mr. Pat Coman, Mr. Vincent Upton

Decision

Having regard to the evidence before it, including the DAFM file, notice of appeal and a consultant's report, and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to confirm the decision of the Minister regarding licence CN83576.

The licence pertains to an application for the afforestation of an area of 10.43 hectares with 800 metres of fencing in the townland of Annagannihy in Co Cork. The main plot of 10 hectares would be planted with 85% Sitka Spruce and 15% additional Broadleaf trees. Drainage, fertilizer and herbicide application is proposed. The smaller plot is a set-back area adjoining a nearby house. There are other setbacks and unplanted areas proposed for internal tracks, road setback and retained hedges and scrub, giving a total unplanted area of some 1.01 hectares. The application indicates that the land is enclosed, agricultural land and a land types assessment was requested as part of the application process. The proposal is on the southern slopes of the Boggeragh Mountains. The proposal was referred to Inland Fisheries Ireland which replied with comments regarding adherence with guidelines and the management of operations on site. There are some specific conditions attached to the licence that relate to visual impact and maintaining clear vegetation around the adjacent dwelling.

There is one appeal against the decision. The grounds suggest that on the basis of information submitted it is not possible to grant a Licence which would be in compliance with the EIA and Habitats

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Directives having regard to specific judgements of the CJEU. Furthermore, the grounds suggest that the test for Appropriate Assessment Screening in Irish Law is set out by Geoghegan J. in Kelly v ABP and goes on to quote from that judgement. There is also reference to the assessment of cumulative effects.

In a statement to the FAC, the DAFM stated that they are satisfied that the decision met their criteria and guidelines and appropriate assessment screening procedures and that they confirm the licence.

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 23rd 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 four European sites the boundaries of which lie within 15km of the proposal. These are The Gearagh SPA, The Gearagh SAC River Blackwater (Cork/Waterford) SAC and Mullaghanish to Musheramore SPA which are situated between 6 and 15 km from the proposal. The FAC considered the conservation objectives and qualifying interests of these sites, the degree of separation and connection with the proposal as described in the report. The report concludes that there is no likelihood of significant effects on these sites arising from the proposed afforestation alone or in-combination with other projects. 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 agrees with, and adopts the findings of the report in respect of the European sites identified. The FAC concluded that the proposed afforestation alone, or in-combination with other projects would not be likely to have significant effects on any European site. 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

The FAC concluded that the proposal is in line with Government policy and good forestry practice. Before making its decision, the FAC considered all of the information submitted with the application, the processing of the application by the DAFM, the grounds of appeal, the consultant's report and any submissions received.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Pat Coman', written over a horizontal line.

Pat Coman On Behalf of the Forestry Appeals Committee

FAC Ref. No. 302/2019

DAFM Ref. No. CN83576

Details of application

The application is for the afforestation of an area of 10.43 hectares in the townland of Annagannihy in Co Cork. The main plot of 10 hectares would be planted with 85% Sitka Spruce and 15% Additional Broadleaf trees. Drainage, fertilizer and herbicide application is proposed. The smaller plot (2) is a set-back area adjoining a nearby house.

The Bio map submitted indicates Bio features as internal tracks 500 metres long (area .2 hectares), Plot 2 (the set-back from the house -area .43 hectares-), road set back 280 metres long (Area 0.14 hectares- indicating 5 metre set back-) and retained hedges and scrub 1200 metres (area 0.24 hectares- not visible on the Bio map-). This is stated to give a total area of 1.01 hectares.

Location and details of project lands:

The lands are located on the south facing slopes of the Boggeragh Mountains about 14 kilometres to the southeast of Millstreet and about a similar distance to the northeast of Macroom. There is a public road, which serves an elevated area on the lower slopes of the mountains, along the western edge of the lands. This road rises towards the northeast and it joins the Blarney to Kanturk regional road about 3 kilometres to the northeast of the project lands.

The lands are located generally between the 300 and 330 metre contours. The lands dip steeply downwards towards the south and southwest. The vegetation on the lands is a mixture of rush, heather, ling, furze, ferns, purple moor grass and other rough grasses. The soil cover appears to be thin and rock outcrops can be seen on the aerial photography. The lands do not appear to be intensively grazed although the land use is indicated to be agriculture.

The land uses in the area are a mixture of agriculture and forestry with forestry being the dominant use to the north and northeast. There are forest plantations in the lands directly to the north and to the east. There are enclosed fields in agricultural use to the south and southwest.

There are some isolated houses in the area, including a relatively new house a short distance to the south close to the public road. The house for which plot 2 is a set back area is located a considerable distance from the public road. Access, to this house, appears to be from a lane which joins the public road some distance to the south of the project lands.

There is a stream, flowing southwards, in the lands both to the west and to the east on the project lands. That to the west is about 250 metres from the lands and that to the east is at a distance of about 200 metres.

Decision of DAFM:

The Department decided to approve the application and to grant a licence. The licence was subject to conditions. The conditions are generally of a standard nature. Many relate to the grant application and others require compliance with general Forest Service standards and requirements for afforestation. Some are of a very general nature e.g. "Adhere to forestry and landscape guidelines" and "All guidelines to apply".

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 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."

In a submission, which he had made prior to the appeal, the appellant stated that there is no proper assessment and there is no assessment of cumulative effects. He had requested that this be attached to all his appeals unless otherwise *stated*.

Departmental response to grounds of appeal:

The Department recommend that there should be no change to its decision. The inspector states that the application was referred to his District on the 27/03/2018. He states that he ran the EIA and carried out the desk assessment of the site as per the Forest Service Standard Operating Procedures and the Appropriate Assessment Procedure, on the 30th of August, 2019. He submits that the recommendation to grant the license was in accordance with the suite of guidelines, standards and procedures within which the Inspectorate operate.

Screening for Appropriate Assessment:

There are 4 Natura 2000 sites located, at least in part, within 15 kilometres of the project lands. The sites in question are

The Gearagh SPA located, at the nearest point, about 14.6 kilometres to the southwest of the project lands.

The Gearagh SAC located, at the nearest point, about 13.8 kilometres to the southwest of the lands.

The River Blackwater (Cork/Waterford) SAC which at the nearest point is about 6.3 kilometres north of the lands and

The Mullaghanish to Musheramore SPA located, at the nearest point, about 5.9 kilometres to the west of the project lands.

The Gearagh SPA has been designated with the following special interests

Wigeon (*Anas penelope*) [A050]

Teal (*Anas crecca*) [A052]

Mallard (*Anas platyrhynchos*) [A053]

Coot (*Fulica atra*) [A125]

Wetland and Waterbirds [A999]

The upland area where the project lands are located is not a habitat used by or suitable for the water birds for which The Gearagh SPA has been designated. Having regard to this and the distance to the SPA the proposed afforestation would have no impact on the conservation objectives of The Gearagh SPA.

The Gearagh SAC has as its qualifying interests

Water courses of plain to montane levels with the *Ranunculus fluitantis* and *Callitriche-Batrachium* vegetation [3260]

Rivers with muddy banks with *Chenopodium rubri* p.p. and *Bidentium* p.p. vegetation [3270]

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

Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*) [91E0]

Lutra lutra (Otter) [1355]

The Gearagh SAC is located upstream, in the River Lee basin, from the location where the River Laney joins the river to the east of Macroom. The Laney River drains the lands on the southern side off the Boggeragh Mountains where the project lands are located. There is, accordingly, no hydrological connection from the project lands to The Gearagh SAC. In the absence of such a connection and having regard to the qualifying interests and the distance between the lands and the SAC the afforestation proposes would have no impact on the SAC.

The River Blackwater (Cork/Waterford) SAC is located to the north of the Boggeragh Mountains i.e. on the opposite side of the mountains from the project lands. The project lands drain southwards and are in the catchment of the River Lee. The qualifying interests of the River Blackwater (Cork/Waterford) SAC are

Estuaries [1130]

Mudflats and sandflats not covered by seawater at low tide [1140]

Perennial vegetation of stony banks [1220]

Salicornia and other annuals colonising mud and sand [1310]

Atlantic salt meadows (*Glaucium-Puccinellietalia maritima*) [1330]

Mediterranean salt meadows (*Juncetalia maritimi*) [1410]

Water courses of plain to montane levels with the *Ranunculus fluitantis* and *Callitriche-Batrachion* vegetation [3260]

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

Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*) [91E0]

Margaritifera margaritifera (Freshwater Pearl Mussel) [1029]

Austropotamobius pallipes (White-clawed Crayfish) [1092]

Petromyzon marinus (Sea Lamprey) [1095]

Lampetra planeri (Brook Lamprey) [1096]

Lampetra fluviatilis (River Lamprey) [1099]

Alosa fallax fallax (Twaite Shad) [1103]

Salmo salar (Salmon) [1106]

Lutra lutra (Otter) [1355]

Trichomanes speciosum (Killarney Fern) [1421]

As the project lands are on the opposite side of the Boggeragh Mountains and as there is no hydrological connection from the lands to the River Blackwater SAC the proposed afforestation would have no impact on the SAC in question.

The Mullaghanish to Musheramore SPA is located, at the nearest point, about 5.9 kilometres to the west of the project lands. This is a very large SPA and the bulk of the SPA is more than 10 kilometres from the lands where afforestation is proposed. The special interest for which this SPA has been designated is the Hen Harrier. The conservation objective is to maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA. The SPA is one of 6 SPAs nationally designated with the Hen Harrier as their special interest. The areas designated are breeding sites and surrounding lands. In winter the birds forage over much wider areas, including low-lying areas.

Hen Harriers and forestry have a peculiar and difficult to understand relationship in Ireland. An increase in bird numbers was associated with the increase in forestry in the country from the 1950s. The pre-thicket stage of first and second rotations of plantations have become the breeding sites of choice of Hen Harriers in recent years. The later stage of the forest cycle with canopy cover is, however, not a suitable habitat for nesting or foraging by Hen Harriers. A forested area, such as that proposed, would accordingly be a suitable habitat for nesting by Hen Harriers for part but not the bulk of a forest rotation. It is important that mature forest area should not dominate the SPAs designated for the protection of the Hen Harrier. I do not consider, however, that the afforestation proposed in this case would be damaging to the conservation objectives for the protection of the Hen Harrier although I accept the Hen Harriers may use the general area, on occasion, for breeding and/or foraging.

The project lands, in this case, are well outside the boundaries of the SPA. There is also a significant amount of similar habitat in the wider upland area encompassing the Derrynasaggart, Boggeragh and Nagle mountain ranges. The lands are also outside the core foraging range for hen harriers nesting in the SPA. They are also outside the maximum foraging range identified for Hen Harriers in a study carried out in the Ballyhouras Mountains for the bulk of the designated SPA. The maximum ranges identified were 7.5 kilometres for females and 11.4 kilometres for males. (These distances are significantly greater than those of 2.5 kilometres -females- and 9 kilometres -males- identified in Scottish studies) I do not consider that the afforestation proposed in this case would be damaging to the conservation objectives for the protection of the Hen Harrier.

In the circumstances set out above I consider that the proposed afforestation is not likely to have any significant effect on the Mullaghanish to Muskeramore SPA having regard to its special interests and conservation objectives.

The Department in its submission does not refer to any additional afforestation, felling and forest road licences in the area, and no maps indicating the location of such have been submitted. As I consider that the project proposed in this case would have no significant effect on any of the Natura sites, I consider also that it would have no significant in-combination effects with any other forestry development. The afforestation proposed would be a self-contained one within the project lands (lands to the north and east are already planted with trees) and would not have any significant in-combination effects with other forestry developments.

On checking recent planning permissions in the area, I find that the most significant one is for a large wind farm to the north and northeast. This permission dates from 2012 but the permission is for a 10-year period. There was a more recent permission for a change to the road layout for the wind farm. At least part of this wind farm has been constructed and wind turbines can be seen above the forested area, to the north of the project lands, in views from the Rylane to Millstreet road to the southwest. The original proposed road layout of the wind farm extended to the forestry lands located to the north of the project lands. (A significant number of turbines were omitted in the An Bord Pleanála decision to grant planning permission) Other planning permissions in the area include permission for a suckler cow shed and other farm buildings on lands near the Millstreet road at a location to the southwest of the project lands and planning permissions for a domestic store and a domestic garage in residential sites to the southeast. None of these are in lands immediately abutting the project lands. As I consider that the proposed tree planting would have no significant effect on any Natura 2000 site, I also consider that it would not have any significant 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 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, in the current Co. Cork development plan, although some roads in the area are indicated to be scenic routes. The road to the west of the lands is not indicated a scenic road on the plan but the road to the southwest which links Rylane Cross to Millstreet is indicated a scenic road at this location. The forestry proposed would not have a significant effect on views from this road as the planted area would blend in with other forested areas. (The tops of some wind turbines can be seen above the forested area in some views from the scenic road). 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. The large wind farm on lands to the north and northeast has a more significant impact on the wider landscape than the additional 10 hectares of forestry now proposed. I consider that the tree planting proposed would not have a significant impact on the landscape, by itself or cumulatively with other developments. On a point of detail, I consider that setting the trees back from the road to the west would help to protect good views southwards when travelling down, towards the designated scenic road, from the more elevated lands to the north- northeast.

The inspector's response to one of the questions on the screening form was that the lands are within an area designated as sensitive to fisheries. The response from Inland Fisheries Ireland (IFI) raises no objection to the proposal although it does recommend some conditions including that the Forestry and Fisheries Guidelines are adhered to. IFI also requested that the following apply: 1. If the crossing of any watercourse is necessary then details of the nature of the crossing be submitted to IFI for consideration in advance. 2. All necessary precautions are taken to ensure site runoff or other contaminated discharges to waters cannot occur. 3. Any proposed instream works should be limited to the period May to September inclusive. 4. IFI should be notified in advance of any proposed instream works or tracking. The forestry works proposed in this case should not of themselves or cumulatively with other developments give rise to any significant water pollution issues in the locality subject to compliance with standard Forest Service requirements.

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 note that there are no designated national monuments located in the project lands. The nearest such monuments are Standing Stones (Galláin) located in lands to the west of the public road at a distance of about 100 metres from the lands. The next nearest monument (stone circle) is located in lands to the south at a distance of about 200 metres from the southern end of the lands. 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 one fifth 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

23/5/2020

