



01 April 2021

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Our ref: 307/2020

Subject: Appeal in relation to licence CN86080

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine (DAFM) in respect of afforestation licence CN86080.

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 CN86080 was granted by the Department on 29 May 2020.

Hearing

An oral hearing of appeal 307/2020 was conducted by the FAC on 30 March 2021.

Attendees:

FAC Members:	Mr Des Johnson (Chairperson), Mr Luke Sweetman and Mr Pat Coman
Secretary to the FAC:	Mr Michael Ryan
Applicant representatives:	[REDACTED]
DAFM representatives:	Mr Robert Windle and Ms Mary Coogan

Decision

The FAC considered all of the documentation on the file, including application details, processing of the application by DAFM and the grounds of appeal, submissions made at the Oral Hearing and all other submissions, before deciding to affirm the decision to approve the licence (Reference CN 86080).

The proposal is for afforestation on a stated site area of 14.02ha at Threewells, Co. Wicklow. 1270m fencing would be provided. Stocking would be with Sitka spruce (11.92ha) and Additional broadleaves (ADB) (2.1ha). Slit planting is proposed and herbicides would be applied in years 0-2 (incl.). Granulated Rock Phosphate is proposed at a rate of 250kg/ha. Soils are predominantly brown earths and the slope

is predominantly flat to moderate. The Bio-map submitted shows hedgerows 640m in length (0.19ha) and a firebreak of 650m (0.39ha).

The Inspector's certification notes that the proposal was field & desk assessed. The site is free of shell marl or highly calcareous soils, is not prone to flooding and has no listed archaeological sites or monuments. Road access is provided. The site is acid sensitive and fisheries sensitive. There is no Freshwater Pearl Mussel catchment involved. The site does not contain or adjoin an aquatic zone. Drainage is not required. Screening for Appropriate Assessment considered Natura 2000 sites within a 15km radius. The following sites were screened out for Stage 2 Appropriate Assessment - Buckroneys-Brittans Dunes & Fen SAC, Deputy's Pass Nature Reserve SAC, Slaney River Valley SAC, Vale of Clara (Rathdrum) SAC, Wicklow Mountains SAC and Wicklow Mountains SPA. Reasons given for the screening conclusion were absence within and adjacent to the project area of any habitats listed as Qualifying Interests of the Natura 2000 site, and absence of any aquatic zone within or adjoining the project area. The forest cover within the townland is stated to be 32.88%, forest cover within 5kms is 24.5% and forest cover in the underlying waterbody is 34.71%. The site is stated to be within the River Sub-Basin Ballycreen Brook_020. In-combination projects considered are - non-forestry – milking parlour, garages, dwellings, and forestry (since 2015) - afforestation (3), Coillte felling (6).

The DAFM referred the application to Wicklow County Council, Inland Fisheries Ireland (IFI) and An Taisce. There is no response from An Taisce recorded. The County Council made recommendations in the event of the licence being granted - check water protection measures during felling and thinning, and check water protection compliance buffers during planting. It is noted that the site has low alkalinity and asks if it is suitable for Sitka spruce planting. The IFI response recommends strict adherence to the Environmental Requirements for Afforestation and the Code of Best Forest Practice.

The licence issued on 29.05.2020. It is subject to standard conditions plus - ADB to consist of 50% Oak, 25% Birch and 25% other Broadleaves, and adherence to forestry and landscape guidelines.

There is a single appeal against the decision to grant the licence. The grounds of appeal contend that the decision does not comply with the Habitats, Birds and EIA Directives. It is merely necessary to determine that there may be a significant effect to trigger Appropriate Assessment (Kelly v An Bord Pleanála). If the development is within 15km of a Natura 2000 site it has been screened in. It is not appropriate at screening stage to take account of measures intended to avoid or reduce the harmful effects on a European site. An assessment under the Habitats Directive cannot have lacunae, and must contain complete, precise and definitive findings capable of removing all scientific doubt as to the effects of the proposed development on a Natura 2000 site. The screening must state the catchment the proposed development is in. A map showing the SACs and SPAs should be submitted. It is necessary to give details of all forestry in the area to determine if EIA thresholds have been exceeded. The FAC must carry out a full AA screening and EIA screening in accordance with the law.

In response to the grounds of appeal the DAFM stated the relevant AA procedure was applied in approving this licence. An in-combination assessment was also carried out for this application. Using the current AA procedure in conjunction with the Habitat and Foraging guidance tables, all Natura 2000 have been screened out as outlined on file. This application alone or in-combination with other forest and non-forest plans/projects in the area will not have a significant impact on the qualifying interest of the Natura 2000 sites screened as part of the AA.



An Oral Hearing was held on 30.03.2021. The FAC sat remotely. The DAFM and the applicant's representative participated remotely. The appellant did not participate. The DAFM detailed the background to the making of the decision to grant the licence. The application had been field and desk assessed. The field inspection was undertaken to confirm the absence of hydrological connection from the site. The Wicklow Mountains SPA had been screened out for Appropriate Assessment for reasons of separation distance and the absence of suitable habitats for the Qualifying Interests on the project lands. The site is considered as very suitable for the growth of Sitka spruce and much of the surrounding forestry is Sitka spruce and is growing well. Broadleaves would be planted along the edges of the plantation to visually soften the development. In-combination effects had been considered prior to the making of the decision to grant the licence. This is a forested landscape and amenity issues had been considered in this context. The applicant's representative stated that his client was a dairy farmer who wished to diversify. The project lands are at the back end of his site. They are free draining, exposed and dry. The site is considered suitable for stocking with Sitka spruce. The applicant is currently establishing another plantation of c.10ha to the south-east of the current application site. Other adjoining forestry does not belong to the applicant. The gradient on site is 'quite' level. There is no hydrological connection from the site.

In addressing the written grounds of appeal, the FAC considered, in the first instance the contention that the decision did not comply with the EIA, Habitats and Birds Directives. The FAC noted that the proposed development is significantly sub-threshold for mandatory assessment under the EIA Directive and associated Irish Regulations. The FAC considered that there was adequate information before the DAFM in respect of the characteristics of the project, location of the project and the type and characteristics of potential impacts, to allow for a preliminary screening assessment on the likelihood of significant effects on the environment arising from the proposed development. The FAC noted that the Inspector's certification had recorded that the site is free of shell marl or highly calcareous soils, is not prone to flooding and has no listed archaeological sites or monuments. Access is provided. The site is recorded as acid sensitive and fisheries sensitive, but it does not contain or adjoin an aquatic zone and drainage is not required. There is no Freshwater Pearl Mussel catchment involved. The FAC noted that the site is free draining and dry and with no hydrological connection. Based on the information before it and having regard to the nature and scale of the proposal, the FAC concurs with the DAFM conclusion that EIA is not required in this case.

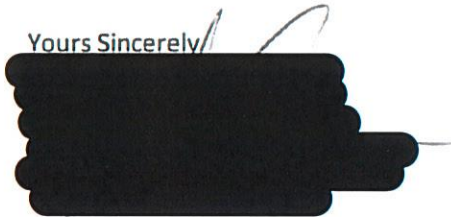
The DAFM has carried out a screening for Appropriate Assessment for Natura 2000 sites within a 15km radius of the project lands, listing the qualifying interests and conservation objectives for each site and examining the potential for effects on the designated sites resulting from the proposed development alone, or in combination with other plans or projects. There is no convincing evidence to indicate that DAFM considered mitigation measures in its screening assessment. The DAFM provided reasoning for its conclusion to screen all of the Natura 2000 sites identified out for Stage 2 Appropriate Assessment. Based on the information before it, the FAC considers that the DAFM screening was consistent with the requirements of the Habitats Directive and sees no reason to dispute the conclusion reached. The FAC considers that there is no convincing evidence submitted to support the appellant's contention that, because a Natura 2000 site exists within 15km of the proposed development, Stage 2 Appropriate Assessment is automatically required. Furthermore,

there is no information before the FAC to indicate that the DAFM decision is inconsistent with the Birds Directive.

The site is within the Avoca-Vartry catchment, Avoca_SC_010 sub-catchment and Ballycreen Brook_020 waterbody. The status of this waterbody is 'High'. Having regard to the nature and scale of the proposal, and to the characteristics of the project lands, the FAC concluded that the proposed development would not have an adverse impact on water quality.

The FAC concluded that there was no serious or significant error in the making of the decision to grant the licence by DAFM and that fair procedures had been complied with. In deciding to affirm the decision to grant the licence, the FAC concluded that the proposed development would be consistent with Government Policy and Good Forestry practice.

Yours Sincerely

A large black rectangular redaction box covers the signature and name of the sender. A small portion of a handwritten signature is visible above the redaction.

Pat Coman, on behalf of the FAC