



An Coiste um Achomhairc  
Foraoiseachta

Forestry Appeals Committee

09 April 2021

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

FAC ref: 427/2020

**Subject:** Appeal in relation to afforestation licence CN83249

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 CN83249.

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

Licence CN83249 was granted by the DAFM on 07 July 2020.

#### Hearing

An oral hearing of appeal 427/2020 was conducted by the FAC on 02 March 2021.

#### Attendees:

<b>FAC Members:</b>	Mr Des Johnson (Chairperson), Mr Luke Sweetman, Mr Dan Molloy & Mr Pat Coman
<b>Secretary to the FAC:</b>	Mr Michael Ryan
<b>DAFM representatives:</b>	Mr Donal Keegan & Ms Mary Coogan

#### Decision

The Forestry Appeals Committee (FAC) considered all of the documentation on the file, including application details, processing of the application by DAFM, the grounds of appeal, submissions made at the oral hearing and all other submissions before deciding to affirm the decision to grant this licence (Reference CN83249).

The proposal is for 13.35 ha of afforestation at Treanboy, Co Galway, in 2 plots (GPC3 & GPC8), with 1850m of stock fencing and involves a change of land use from agriculture to forestry. The predominant soil type underlying the project area is given as podzols in nature. The slope is predominantly flat to moderate (<15%). The project area is crossed by / adjoins an aquatic zone(s). The vegetation type(s) within the project area comprise grass, rush, furze. The proposal is within the Upper Shannon Catchment and the Suck\_SC\_040 sub-catchment.

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The proposal comprises a relatively flat, elongated site with public roads fronting both north and south boundaries, the surrounds comprise peat lands and grasslands. The DAFM evidence states 1.74% forest cover on the underlying waterbody, and 7.09% forest cover in Treanboy townland, also in the assessment to determine EIA requirement the Inspector confirms this application, together with existing afforestation of 3 years or less within a 500 metre radius, does not constitute an area greater than 50 ha, the area is given as 19.8 ha. The application was desk assessed and the site had been field assessed by the DAFM under a previous application CN82846. There were no referrals to referral bodies for CN83249 but there had been a referral to the Local Authority regards CN82846.

The DAFM Inspector carried out an Appropriate Assessment (AA) screening with reference to the provisions of Article 6(3) of the Habitats Directive, identifying Natura 2000 sites within 15km of the project lands and all Natura sites were screened in on the basis of unknown or uncertain effects on these sites, alone or in combination with other plans or projects, and taking cognisance of the precautionary principle, and noting the submission made by the appellant at the time and the cases referenced therein. An in-combination assessment was completed on 22 May 2020 looking at other plans or projects in-combination with the proposal, these included planning permissions from 2015 to 2019 mostly comprising new dwelling houses, extensions to dwellings and farm buildings, there were no An Bord Pleanála plans or projects and no EPA plans or projects to include in the assessment, other forestry related projects comprised 18 afforestation licences, 4 forest roads, 10 private felling and 25 Coillte felling licences. The application was referred to the DAFM's Ecology Unit. In a new AA screening determination completed on 01 July 2020 by the DAFM Ecologist all 18 of the European sites within a 15 km radius of the proposal were screened out with AA not required, reasons included a lack of a hydrological connection, distance, not being located near any Karst features or swallow holes, being within an area of Low Groundwater vulnerability and low subsoil permeability, absence of a surface water connection, locations upstream of the proposed development, being outside the foraging range of the qualifying interests.

The licence was issued with what are relatively standard conditions plus the following additional conditions: -

- Exclude any High pH areas, if encountered
- Sheep fence if sheep adjoin, min Medium gauge mild steel or HT 8/80/15
- Furze regrowth must be controlled
- Adhere to forestry biodiversity guidelines
- Water Buffer Zone Setback 20m.

There is one appeal against the decision to grant the licence, the grounds of appeal are summarised as follows. The decision does not comply with the Habitats Directive, the Birds Directive and the Environmental Impact Assessment Directive. The test for Appropriate Assessment Screening in Irish and EU law is that it is, merely necessary to determine that there may be such an effect, rather than to state that it will not have a significant effect. If the development which is within 15km of a Natura 2000 site it has been screened in. The appellant provided extracts from the following judgement Case C-323/17 stating that Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that, in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the





implications for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site. The court also states in the judgement the following: 36. That conclusion is supported by the fact that a full and precise analysis of the measures capable of avoiding or reducing any significant effects on the site concerned must be carried out not at the screening stage, but specifically at the stage of the appropriate assessment. 38. In that regard, the Court's case-law emphasises the fact that the assessment carried out under Article 6(3) of the Habitats Directive may not have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the proposed works on the protected site concerned. The appellant contends that if it is said to be in a different catchment, the screening must state the catchment that the application is in. It is also necessary to realise that Birds can fly they do not all rely on watercourses to move. Also, a map showing the SACs and SPAs and the site of the proposed development should be attached.

The appellant set out regards screening for EIA, that it is necessary to give details of all forestry in the area and show that the cumulative afforestation does not exceed 50ha. Also, it is necessary to give the total km of the forest roads in the area and show that no roads which are not included in the application will be needed to carry out this development, that includes thinning and clear-fell.

The appellant further submitted in respect of obligations on the FAC, these are not grounds of appeal against the DAFM decision to grant licence CN83249.

In response to the grounds of appeal the DAFM Inspector stated that the afforestation application, CN83249, Treanboy, Ballymoe, Co. Galway, was originally certified for approval on 27 March 2019, on the basis of the AA procedure in place at that time, AAP26NOV18, Screening out the proposed development from the need for Stage 2 AA.

The approval was recommended at that time with the following comments: *Previously inspected as CN82846, today's date, 27 March 2019, entered as inspection date. Change of forester and removal of UP areas and Bog areas. Referrals and public notice obligations fulfilled under CN82846, no need to wait further. Objection noted. As per AAP26NOV2018, site is 2.5km from Killsallagh Bog SAC 0285, with no hydrological connectivity. EPA watercourse at South protected by buffers and Birch Plot. Screening conclusion 2 to be emailed.*

Approval did not issue at that stage, and this file was subsequently returned to my worklist in November 2019. I carried out AA screening again in accordance with the revised Procedure as per AAP5NOV19 and in the absence of any Screen Out Scenarios, i.e. Bird and Habitat tables, all Natura sites were screened in on the basis of unknown or uncertain effects on these sites, alone or in combination with other plans or projects, and taking cognisance of the precautionary principle, and noting the submission made by the appellant and the cases referenced therein.

The FAC held an Oral Hearing on 02 March 2021. The parties were invited to attend in person or to join remotely. Neither the applicant nor the appellant attended or participated in the oral hearing, the DAFM participated remotely, and the FAC sat in person and remotely at this hearing. At the hearing the DAFM described the processes involved in considering the application. The DAFM described how the proposal was previously applied on as part of CN82846 and was ground inspected during



December 2018, that application had been referred to Galway County Council for which no response was received and was also the subject of an AA screening and screened out for Stage 2 AA. The DAFM confirmed CN82846 was subsequently withdrawn (06 February 2019) by the applicant. The application for CN83249 was received on 27 February 2019 on a reduced area that excluded bog areas and unplatable areas, bog area to west was identified and area liable to flooding south of the public road was identified, and the new licence number was required solely because of a change of forester by the applicant. The DAFM took the view the public notice requirements were met under application CN82646. However, site notice obligations were met regards CN83246 on 27 February and 12 March 2019 evidenced with photographs submitted and the application was advertised on the DAFM website on 20 March 2019. The DAFM confirmed public notice requirements were fully met regards CN83249. The DAFM described the proposal as being c. 2.5km from Killsallagh Bog SAC, having an EPA marked watercourse at its south for which there is a 20m buffer and a plot of Birch and Alder to be planted (plot 2). The DAFM explained that the application was initially screened out for AA using the AA screening applied to CN82846, which was based on a 3km radius, but a subsequent change in operating procedures required a new AA screening using a 15 km radius but this was undertaken in the absence of associated birds and habitats tables and for this reason, using the precautionary principle, all of the Natura sites within a 15km radius were screened in for Stage 2 AA. The Inspector stated that an absence of scientific certainty was a factor on his part. The Inspector confirmed the file was then returned to his work list in July 2020 with an AA screening determination completed 01 July 2020 in an Ecology review that screened out each of the Natura sites within a 15km radius of the proposal. An in-combination assessment had also been completed in the interim period. The DAFM confirmed the Killsallagh Bog SAC is upstream and would not be affected by the proposal, that there is a downstream connection via the stream at the south of the proposal to the River Suck Callows SPA. The DAFM stated regards Granulated Rock Phosphate fertiliser that this would only be used where necessary on poorer areas of the site. The southern area of the site is at risk of infrequent but not severe flooding and Birch and Alder is proposed there for that reason. The inspector described the southern area of the proposal as flat and low-lying with modified peat soil and this changes to wet mineral soil at the central area to mineral soil, indicating a mix of mineral and peat soils. There is a lot of furze established on the proposal from neglect. The Inspector stated a yield class of 22 would be expected and the site was well suited to afforestation.

In addressing the grounds of appeal, the FAC considered, in the first instance, the contention that the proposed development should have been addressed in the context of the EIA Directive. The proposal was the subject of an assessment to determine EIA requirement by the DAFM on the IFORIS certification system as evidenced. The EU Directive sets out, in Annex I a list of projects for which EIA is mandatory. Annex II 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 I. Annex II 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 II). 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 application is well sub-threshold for mandatory EIA and is contained in an area of mostly grassland and some cutaway





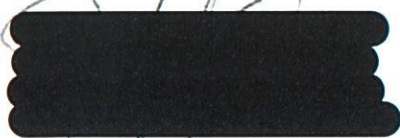
bogland, with some small areas of forestry. The evidence suggests a total area of 19.8 ha is afforested within a 500m radius within the last 3 years with an additional 5.12 ha of afforestation immediately to the west of the proposal since the decision at appeal was issued. The location is rural with sparse settlement patterns and while fronting to two public roads will be subject to the mandatory setbacks per the Forestry Standards Manual 2015. The FAC is satisfied there is no evidence that there will be a significant or serious impact on the receiving environment. The proposal is within the Suck South ground waterbody which has good status, and the Suck\_060 river waterbody which has good status. The proposal is not within or adjacent to any nationally designated site and is not within any high amenity landscape. The FAC is satisfied there is no breach of the provisions of the EIA Directive in this instance. In addition, the FAC is satisfied public notice procedures were followed in this instance. Also, a referral regards CN83249 to the Local Authority, while in some way offset by the referral of the previous licence application on a larger area that included all of the proposal, is not shown to have been required in this instance.

Under Article 6(3) of the Habitats Directive, any plan or project not directly connected with or necessary to the management of a European site, must be subject to an assessment of the likely significant effects the project may have on such a designated site, either individually or in combination with other plans or projects, having regard to the conservation objectives of that designated site. In this case, the DAFM undertook a Stage 1 screening in relation to 18 Natura 2000 sites as evidenced on the IFORIS certification pages with all European sites screened out for Stage 2 AA. The reasoning for the determination includes that each site was originally screened in by the Inspector on 22 November 2019, and an AA screening report subsequently provided by a Forest Service Ecologist on 01 July 2020, screened out all Natura sites, and to note also the in-combination report provided by the DAFM concluding no effects. The AA screening determination states that the initial recommended screening decision of the District Inspector underwent a verification process. As a result, all of the European Sites with an original 'screened in' recommendation are hereby screened out, based on the rationale set out in Table 1 and the in-combination assessment dated 22 May 2020. The AA screening determination completed on 01 July 2020 concluded that following the initial screening and subsequent expert verification, and pursuant to Article 6(3) of the Habitats Directive, the European Communities (Birds & Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011) (as amended) and the Forestry Regulations 2017 (S.I. No. 191 of 2017), as amended by *inter alia* the Forestry (Amendment) Regulations 2020 (S.I. No. 31 of 2020), the DAFM has determined that there is no possibility of CN83249 having any likely significant effect, either individually or in combination with other plans and projects, on any European Site. 18 Natura 2000 sites were screened out for reasons that included an absence of hydrological connection, distance, not located near any Karst features or swallow holes, being within an area of Low Groundwater vulnerability and low subsoil permeability, no surface water connection, outside of foraging range of qualifying interest species. In particular the closest European site to the proposal Kilsallagh Bog SAC is stated as located upstream of the proposed development, and due to the lack of a hydrological connection and the distance from this SAC (2.6km), it is determined that there will be no significant effects on the qualifying interests of this Natura site. Also, regards the River Suck Callows SPA located 11.9km from the proposed development site, this is outside the foraging range of the qualifying interests for this Natura site. A second order stream to

the south of the site flows into the River Suck (fifth order) 1.65km downstream. From here, the river meanders through a predominantly agricultural and bog landscape until it connects to this SPA a further 15km downstream. Due to the distance from this site, and the reasons listed above, there will be no impacts on the water quality within this SPA. The FAC considers there is no breach of Article 6(3) of the Habitats Directive and that the screening conclusion on which the decision to grant the licence CN83246 is based is reasoned and sound.

In the circumstances outlined above, and based on the evidence before it, the FAC concluded that the DAFM did not make a serious or significant error or series of errors in their decision to issue afforestation licence CN83249 and did so in compliance with fair procedures. In deciding to affirm the decision to grant the licence, the FAC considered that the proposed development would be consistent with Government policy and good forestry practice.

Yours Sincerely

A large black rectangular redaction box covering the signature of Pat Coman.

Pat Coman, on behalf of the FAC