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15 January 2021

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 approval CN84993.

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 CN84993 was granted by the Department on 22 May, 2020.

Hearing

A hearing of appeal 283/2020 was conducted by the FAC on 14 December, 2020.

FAC Members: Mr. Myles Mac Donncadha (Chairperson), Ms. Claire Kennedy and Mr. James Conway.

Decision

The Forestry Appeals Committee considered all of the documentation on the file, including application details, processing of the application by DAFM, and the grounds of appeal before deciding to affirm the decision to grant this Afforestation (Reference CN84993).

The proposal comprises of 19.57 ha of afforestation at Emlagh, Co. Meath and the proposed species composition is Norway spruce (14.7 ha), Birch (2.9 ha), Alder (1 ha) and Oak (1 ha) in one block. The project area does not fall within any designated Natura 2000 site but is within 15km zone of River Boyne and River Blackwater SAC (Site code:2299) at a distance of 3.2 kms, and Killyconny Bog (Cloghbally) SAC (Site code:6) at a distance of 11.1 kms, and Girley (Drewstown) Bog SAC (Site code:2203) at a distance of 11.8 kms, and River Boyne and River Blackwater SPA (Site code:4232) at a distance of 3.2 kms. The project area is bordered by agricultural land to the north and south with semi-mature forests to the east and west.

The predominant soil types underlying the project area are brown earths. The slope is mostly flat to moderate (<15%). The project area does not adjoin or contain an aquatic zone. The vegetation type within the project area comprises GA1 grassland. No watercourses are documented is located within the WFD Boyne Catchment (ID 07) and sub-catchment of Moynalty (ID 07_14). The Aghaneane river, which joins the River Moynalty at the south western corner of the site forms the western boundary of the site, and a water course discharging to the River Moynalty forms the southern and eastern boundary of the site. Soil comprise about 25% peats with the remainder as mineral in origin.

DAFM referred the project to An Taisce, Meath County Council, Inland Fisheries Ireland and NPWS and for all of whom responses are on file except Meath County Council. An Taisce pointed out that a wider setback of 10m was indicated per DAFM guidelines and that all projects required a minimum Areas for Biodiversity Enhancement (ABE) percentage of 10% rather than the 7% proposed.

On 06 November 2019 the Forest Service District Inspector undertook an initial desk-based screening which was followed by numerous consultations with statutory consultees and a field inspection and a re-screening on 3 March 2020 using the Appropriate Assessment Screening protocol in place at the time. The inspector reviewed the details of the Natura 2000 site within 15km of the project, including its

qualifying interests and conservation objectives, and supporting habitats and species. He concluded that the project could be screened out with regard to 2 out of the 4 Natura 2000 sites identified on the basis that the project would not have a significant effect on any designated areas due to the lack of hydrological connection (Girley (Drewstown) Bog) and location of the project downstream (Killyconny Bog (Cloghbally) SAC). The sites screened in for NIS/AA were River Boyne and River Blackwater SAC (Site code:2299) and River Boyne and River Blackwater SPA (Site code:4232) on the basis that there is direct hydrological connectivity with the nearby SAC and that Whooper Swans are known to use Emlagh (per the Natura 2000 site synopsis). An NIS was received from the applicant on 27 March 2020 and the AA Determination completed by a DAFM appointed ecologist on 5 May 2020. The Screening for AA aligned with the inspector's conclusion that Girley Bog and Killyconny Bog SACs could be screened out while an NIS was prepared for the River Boyne and River Blackwater SAC and SPA. In its deliberations DAFM considered the initial application, including all information submitted by the applicant, information available via iFORIS, responses from referral bodies and submissions from third parties and any subsequent documentation received from the applicant, including the NIS dated 26 March 2020. The Whooper Swan and other concerns were addressed and relevant conditions were added to the approval that issued on 22 May 2020.

There is one appeal against the decision. The grounds relate to The Forest Service, in its screening for Appropriate Assessment found that there were Natura sites within 15km of the project and this should be a 'trigger' for Appropriate assessment as the project may have an impact. A full Environmental Impact Assessment screening should also be undertaken (if deemed to be required).

In a statement to the FAC, the DAFM responded to the grounds of appeal stating that the relevant AA procedure was applied in approving this licence. The screening information can be found on file. An in-combination assessment was also carried out for this application and can also be found on file. Using the current AA procedure in conjunction with the Habitat & Foraging guidance tables two out of the possible four Natura 2000 sites have been screened out as outlined on file. Appropriate Assessment was therefore triggered and a Natura Impact Assessment (NIS) was compiled. The AA Determination conducted to address the matters arising from the AA Screening concludes that the project will not have an adverse impact on the concerned sites, subject to conditions including a 20m aquatic zone setback, 5m setback for other relevant watercourses, temporary silt traps and additional conditions related to the protection of otter habitat, manual weed management and planting of broadleaves adjacent to the setback areas.

The FAC had regard to the record of the decision under appeal and the submitted grounds. With regard to the grounds of appeal stating that Appropriate Assessment is triggered when any Natura 2000 site is within 15km of the project the FAC draws attention to Forestry Regulation S.I.191 / 2017 licence and nomination of DAFM as the 'competent national authority' with respect to screening for Appropriate Assessment under Article 6(3) of the Habitats Directive. In this case, the process was followed as laid out and the screening process resulted in the applicant being asked to submit a full Appropriate Assessment and NIS.

The FAC addressed the grounds of appeal that a full Environmental Impact Assessment screening should also be undertaken. 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 proposed afforestation is significantly less than the 50 Hectares for which Environmental Impact Assessment would be mandatory according to the Irish regulations. The DAFM considered the application across a range of criteria, including water, designated

areas, landscape and cumulative effects, and determined that the project was not required to undergo the EIA process. Having regard to the record of the decision and the submitted grounds and the nature, scale and location of the proposal the FAC is satisfied that the DAFM did not err in the decision regarding EIA.

The FAC notes that the up to date Appropriate Assessment Procedure v.05Nov19 was applied to this project and that 2 of the four sites within 15kms of the project were screened in (as subsequently supported by the Appropriate Assessment). The DAFM AA Determination supported the Appropriate Assessment and NIS supplied by the applicant and the licence conditions are reflective of a thorough review of the available documentation, referral correspondence and submissions received. The AA Determination concludes that the activity individually, or in combination with other plans or projects will not adversely affect the integrity of the target European sites if carried out according to the specified conditions.

In deciding to affirm the licence decision, on the balance of evidence, the FAC is satisfied that there was no serious or significant error or series of errors made in making the decision or that the decision was made without complying with fair procedures. The FAC concluded that the proposed development would be consistent with Government policy and Good Forestry Practice.

Yours sincerely



Mr. Myles Mac Donncadha (on behalf of the FAC)