



An Coiste um  
Achomhairc  
Foraoiseachta  
Forestry  
Appeals  
Committee

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

May 17<sup>th</sup>, 2021.

FAC ref: 305/2020

Subject: appeal in relation to Licence CN86074

Dear [REDACTED]

I refer to your 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

Afforestation Licence CN86074 was granted by the Department of Agriculture, Food and the Marine (DAFM) on May 28<sup>th</sup>, 2020.

### Hearing

An oral hearing of appeal FAC305/2020 regarding the decision to issue the licence CN86074 was conducted by the FAC on April 15<sup>th</sup>, 2021.

### Attendees:

FAC:	Mr Des Johnson (Chairperson) Mr Pat Coman, Mr Luke Sweetman, Mr Dan Molloy.
Administrative Secretary:	Mr Michael Ryan.
Applicant representatives:	[REDACTED]
DAFM Representatives:	Ms Mary Coogan, Mr Seppi Hona.
Appellant:	[REDACTED]

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Foraoiseachta  
Forestry Appeals Committee

Kilminchy Court,  
Portlaoise,  
Co Laois  
R32 DWT5

Eon/Telephone 076 106 4418  
057 863 1900

## Decision

The FAC considered all of the documentation on the file including application details, processing of the application by the DAFM, the grounds of appeal, submissions made at the Oral Hearing and all other submissions, before deciding to affirm the decision of the Minister regarding Licence CN86074.

The proposal is for the Afforestation of 5.06ha at Clonyhague, Ballynagore Co Westmeath. The proposed stock for the site in three plots is plot 1 Birch (1.03ha), plot 2 Norway spruce (3.29 ha) and plot 3 Birch (.74ha). In line with details as provided by DAFM, the soil type is predominately podzols in nature, the slope is moderate 0-15% and the vegetation type is grass and rushes, the approximate forest cover within the townland is 1.26%, and within 5km of the project site is 8.91%. The approximate forest cover within the underlying waterbody is 1.61%.

There is a stream flowing at the northern edge of plot 1 and plot 3. The stream travels approximately 300m in a westerly direction before joining the River Brosna. The site is located in the Lower Shannon 25A Catchment, Brosna SC20 Sub Catchment 25A\_7, Brosna \_050 River waterbody with moderate status.

There were no referrals to outside bodies.

The Applicant submitted an application pack which includes Maps, Appropriate Assessment (AA) Pre Screening Report and a document titled Harvest Plan.

The DAFM carried out Appropriate Assessment (AA) screening on seven Natura 2000 sites within a 15km radius of the site. Five SACs were screened out for reasons of the position of the project area downstream from the Natura site, and the subsequent lack of any hydrological connection, Clara Bog SAC, Lough Ennell SAC, Lough Owel SAC, Raheenmore Bog SAC and Split Hills and Long Hill Esker SAC.

Two SPAs were screened out for reasons of the project outside of commuting distance for Qualifying Interests, Lough Owel SPA and Lough Ennell SPA.

The DAFM consulted the following agency websites on May 25<sup>th</sup> ,2020 as part of the In-combination report, Planning and local Government website listing domestic dwellings at different stages of the planning process, slatted bovine accommodation, classroom extension and GAA field development. Forestry plans and projects from DAFM's internal records include seven Afforestation projects 2017 – 2019, two forest road projects 2016 and 2018, three Private Felling Licence projects and three Coillte Felling Licence projects 2017 and 2018.

There is one appeal against the decision to grant the licence. In summary the grounds of appeal contend:

- The decision does not comply with the Habitats, Birds and EIA Directives
- There is an obligation on the FAC to comply with all European Directives.

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- There is no need to establish a significant effect to trigger AA - it is merely necessary to determine that there may be a significant effect (Kelly v An Bord Pleanála). The AA screening shows that there may be such an effect.
- If the development is within 15km of a Natura 2000 site, it has been screened in for AA
- It is not appropriate at screening stage to take account of measures intended to avoid or reduce the harmful effects on a European site
- The assessment carried out in accordance with the provisions of the Habitats Directive must not have lacunae and must be capable of dispensing with all reasonable scientific doubt as to the effects on a Natura 2000 site
- The catchment the proposed development is in should be stated
- A map showing all relevant SACs and SPAs should be submitted
- There is a duty on the FAC to carry out a full screening under the Habitats and EIA Directives.

The DAFM, in providing a response to the grounds of appeal have stated that the site is hydrologically connected to the River Brosna and measures implemented are for the protection of local water needs and not for any designation. The River Brosna bisects Split Hill and Long Hill SAC but due to the nature of listed Qualifying Interests, no significant effect is expected. No other Natura sites within the zone are hydrologically connected to this project.

The FAC held an oral hearing on April 15<sup>th</sup>, 2021 and all parties were invited to attend and participate. The FAC sat remotely and the DAFM participated remotely. Neither the applicant nor the appellant participated.

At the hearing the DAFM set out processing procedures undergone in issuing the licence, that the application was desk assessed, that there were no referrals, that an in-combination report was carried out and that the application was approved with standard conditions.

As part of FAC questioning, the DAFM were asked about what appeared to be a ridge of standalone trees on plot 2 and if there was provision for the trees to be retained. The DAFM stated existing trees would be retained and planting would be outside of drip line, there was a 10m wide ridge of hazel trees extending from the east to west side of plot 2 and that this hazel ridge would be retained with a setback of 5m. The FAC sought clarification from the DAFM as to the time of the year the site would be cultivated and prepared for planting. The DAFM stated, preparation and planting of the site would take place outside of the Bird Breeding Season. The DAFM also stated that scrub would be removed from the site in line with Section 40 of the Wildlife Act, e.g. outside of the period April 15<sup>th</sup> to August 31<sup>st</sup>.

In addressing the grounds of appeal, the FAC firstly considered the contention that the decision does not comply with the Habitats, Birds and EIA Directives. The FAC notes that the appellant has not specified or presented evidence as to the presence of Annex IV species or other bird species and has not outlined reasons why the proposed development would threaten their



protection. The FAC concludes there is no substantiated related reason on which to affect the decision.

The FAC have also considered the contention that the decision does not comply with the EIA Directive. 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 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, the evidence suggests with the exception of this application CN 86074, no land within a 500m radius has been afforested in the last three years. There is agricultural grassland in the surrounds, some small forestry plots mostly of native woodland and a rural setting with a small number of houses and farmyards. The proposal is not within or adjacent to any nationally designated site and is not within a high amenity landscape. In addition, the licence is issued subject to compliance with the DAFM guidelines and requirements for landscape, harvesting, water quality, bio-diversity and archaeology. The Brosna \_050 River Waterbody is afforded a 'moderate' status and the FAC is satisfied having regard to the nature and scale of the proposal there will be no effect. Based on the foregoing, the FAC is satisfied that an EIA is not required in this case and concurs with the conclusion of the DAFM in this regard. As such the FAC concluded that there is no breach of any of the provisions of the EIA Directive.

The FAC considered the procedures followed by the DAFM in screening for AA, all Natura 2000 sites within a 15km radius were considered. Qualifying interests and conservation objectives were identified and the potential for significant effects was assessed. In combination projects as outlined above were taken into consideration. All sites within a 15km radius were screened out for AA and reasons given for this conclusion. The FAC is satisfied that the AA screening completed by the DAFM was consistent with the requirements of Article 6(3) of the Habitats Directive and that the conclusions reached were sound.

In relation to the appellant's contention that it is not appropriate at screening stage to take account of measures intended to avoid or reduce the harmful effects on a European site, the FAC could find no basis for the contention that mitigation measures had being considered in the screening out stage. The FAC is also satisfied that the screening exercise completed by the DAFM was consistent with the requirements of Article 6(3) of the Habitats Directive and that the conclusions reached were sound.

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal and submissions received including at the oral hearing. The FAC is satisfied that there is no serious or significant error or series of errors in making the decision and the decision was made in line with fair procedures.

In deciding to affirm the decision, the FAC considered that the proposed development would be consistent with Government policy and Good Forestry Practice.

Yours sincerely



Dan Molloy, on behalf of FAC

