



11th June 2020

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Subject: Appeal FAC235/2019 against licence decision CN83975

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 CN83975 for 8.29 hectares of afforestation at Ballynamuddagh, Tinraheen, Co. Wexford was issued by the Department of Agriculture, Food and the Marine on 2nd September 2019.

Hearing

A hearing of appeal FAC235/2019 was held by the FAC on 27 May 2020.

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

Decision

Having regard to the evidence before it, including the DAFM file, notice of appeal, all submissions and observations 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 CN83975.

The licence pertains to 8.29 hectares of afforestation and 300 metres fencing on land described as enclosed, agricultural land with a grass, grass rush vegetation types and currently used for mixed farming. The proposal would take place in the townlands of Ballynamuddagh, Tinraheen, Co. Wexford to the southwest of Ballaghkeen. Planting of Norway spruce, Scots pine, western red cedar and birch, oak, cherry and hazel are proposed. The site is described as exposed at an elevation of 38-40 metres with a neutral aspect. Site preparation through mounding and the use of 250 Kg Granulated Rock Phosphate and herbicide control in years 0 and 1 and manual weed control is proposed. The proposal is divided into two plots with the larger adjoining the old path of the River Sow before it was redirected. The proposal was referred to Inland Fisheries Ireland who noted the sensitivity of the area and that it would be

important that buffer zones are included. The Bio-map provided with the application identifies buffer zones from the river that would be included in the proposal.

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 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 an alleged lack of 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 that they confirm the licence. They note that the site was field inspected and assessed using GIS. They state that their appropriate assessment screening procedures were adhered to and deemed that there was no possibility that the project will have a significant effect on any Natura site, due to physical separation and the lack of any ecological pathway. An aerial image of the site relative to European sites in the vicinity was also provided.

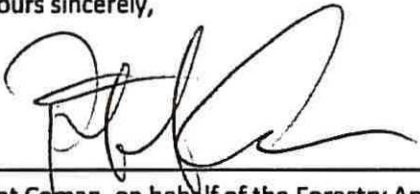
The FAC sought a report by an independent consultant in relation to this proposal and, in particular, a Stage 1 screening for Appropriate Assessment in accordance with the provisions of Article 6(3) of the Habitats Directive (92/43/EEC). The report was considered by the FAC in coming to its decision and a copy of the report is contained in the public file.

The report identifies and considers five European sites the boundaries of which lie within 15km of the proposal. These are, including the direct distance from the proposal to the closest boundary, Knockmuckridge-Tinnerberna Sandhills SAC about (9.18 km), Slaney River Valley SAC (7.34 km), Screen Hills SAC (7.34 km), The Raven SPA (9.2 km), and Wexford Harbour and Slobbs SPA (7.4 km). The report notes that the proposal is in the River Sow/Coastal catchment and is at a considerable distance from any European site and could only be considered to be connected to a site by the fact that the adjoining river enters the estuary at Wexford. The report also notes the unsuitability of the proposal land for the qualifying interests of the coastal SPAs and the degree of separation. 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, including the fact that there are no conditions attached to the licence designed to mitigate impacts on a European site nor were such measures included in the screening. 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 in the report 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. This included the consideration of submissions received and details provided on the DAFM file and in the public domain. 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 that formal screening or the carrying out of an 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 read 'Pat Coman', written over a horizontal line.

Pat Coman, on behalf of the Forestry Appeals Committee



FAC Ref. No.235/2019.

DAFM Ref. No. 83975.

Details of application;

The application is for the afforestation of 2 plots of land located in close proximity to each other in the townland of Ballynamuddagh in Co. Wexford. The total area of the 2 plots is 8.31 hectares. Plot 1, which is a long narrow plot with a northeast to southwest orientation has an area of 5.8 hectares and plot 2, which is located a little to the northeast of plot 1 has an area of 2.49 hectares.

The application is for the afforestation of the 2 plots with a mixture of Norway Spruce (65%), Scots Pine (10%), Western Red Cedar (10%) and Additional Broadleaf (15%- Birch, oak, Cherry and Hazel-).

It is stated in the inspector's assessment that the soils are podzols on a flat to moderate slope. The application indicates that fertilizer, drainage and herbicide would be required. It is stated that the soils are mineral soils at an elevation of 38-40 metres.

Location and details of lands:

The lands are located beside the Sow River in a rural area a short distance to the south of the village of Ballaghkeen which is located on the Enniscorthy to Blackwater road about half way between the 2 towns.

The land uses in the area are a mixture of agriculture and forestry. There is a considerable amount of forestry to the north of plot 2 and to the northeast, west and southwest of plot 1. There is also a forested area to the southeast of plot 1. Forestry, accordingly, is the dominant land use locally. There is a significant number of houses, to the northeast of the project lands, along the regional road leading to Enniscorthy (R744) to the west of the village of Ballaghkeen.

The plans indicate that the original line of the Sow River ran through the larger site. The line of the main river is now indicated to be to the southeast of plot 1 and to abut the southeast boundary of plot 2. The old and new route of the river join at the southwestern end of plot 1. The inspector's assessment indicates that an aquatic zone crosses or adjoins the lands. It is not clear if this refers to the route of the original river or if it refers to the existing river at the southeast boundary of plot 2. The aerial photography of the area does not clarify the existing nature of the route of the original river through plot 1. The BIO map indicates a length of 850 metres and a total area of 0.43 hectares for the line of the old river. This suggests a width of 5 metres along the line of the old river presumably being left unplanted. (Without a site inspection it is not possible to be specific about the existing nature of this area).

The older OS maps show a stream or river along the line of the current river. There is also a stream or drain indicated along the old route. The old route is also indicated to be the townland boundary. This suggests that the main route of the river has been

altered for some considerable period of time but the original route would be the townland boundary i.e. through plot 1.

Decision of DAFM:

The Department decided to approve the application and grant a licence. The licence was subject to 13 conditions. The conditions are of a standard variety dealing with the grant application and requiring compliance with standard Forest Service requirements and standards for afforestation. Condition 13 states, inter alia, "all guidelines to apply" and "Adhere to forestry and landscape guidelines". These requirements are also repeated later in the details of the licence.

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.

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.

DAFM response to grounds of appeal:

The inspector submits that prior to making a recommendation to approve with conditions, she field inspected the site on the 15/08/2019 and evaluated the project (CN83975) using the appropriate GIs datasets on the 29/08/2019. The proposed afforestation application is greater than 3 km from any Natura site and does not overlap any FPM catchment (as per the draft Forests & FPM Plan). Furthermore, there is no factor that overrides the protection provided by this physical separation. She considers that there is no possibility that the project will have a significant effect on any Natura site, due to physical separation and the lack of any ecological pathway. Any safeguards within the project, or any conditions attached to any approval issued, are unrelated to the protection of any Natura site. She therefore screened out the project for the purpose of Appropriate Assessment, i.e. Appropriate Assessment is not required.

The inspector submits that having reviewed licensed and proposed forestry activity on IFORIS, planning permission information available from the Wexford County Council Planning and the other licence information from the EPA's AA/licence information system, she concluded that there is no potential for the proposed works /project to contribute to any adverse effects on any Natura or European Site when considered in-combination with other plans and projects.

The inspector submits that the afforestation project is in line with the Forestry Programme 2014-2020. Individually, the project does not represent a source, or if so, no pathway for significant effect on any European site exists. Consequently, there is

no potential for the project to contribute to any such effects, when considered in combination with other plans and projects.

Appropriate Assessment screening:

There are 5 Natura 2000 sites, at least in part, within 15 kilometres of the project lands. The sites in question are

Knockmuckridge-Tinnerberna Sandhills SAC

Slaney River Valley SAC

Screen Hills SAC

The Raven SPA and

Wexford Harbour and Slobbs SPA

The Knockmuckridge-Tinnerberna Sandhills SAC is located on the coast about 9.18 kilometres from the project lands. The Sand Hills are indicated on the EPA maps as being in the Blackwater (Wexford) River catchment. The SAC is located on the coast to the east of the project lands. The project lands are in the catchment of the Sow river which drains southwards to Castlebridge where it joins the estuary of the River Slaney. There is no hydrological connection from the project lands to the Knockmuckridge-Tinnerberna Sandhills SAC.

The qualifying interests of the Knockmuckridge-Tinnerberna Sandhills SAC are

Embryonic shifting dunes [2110]

Shifting dunes along the shoreline with *Ammophila arenaria* (white dunes) [2120]

Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]

There is no pathway through which the proposed afforestation could impact on the qualifying interests listed. The project would, accordingly not be likely to have any significant effect on this SAC.

The Slaney River Valley SAC is located, at the nearest point, about 7.34 kilometres to the west of the project lands. The project lands however are located in the River Sow/Coastal catchment rather than the Slaney catchment. The River Sow flows southwards to join the Slaney estuary near Castlebridge. The direct distance to the confluence of the Sow with the Slaney estuary is about 9.28 kilometres. The distance along the river, however, is about 14 kilometres. (These distances are from the southern end of plot 1 where the old river course intersects with the new course).

The qualifying interests of the Slaney Valley SAC are

Estuaries [1130]

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

Atlantic salt meadows (*Glaucopuccinellietalia maritima*) [1330]

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

Water courses of plain to montane levels with the Ranunculion 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]

Petromyzon marinus (Sea Lamprey) [1095]

Lampetra planeri (Brook Lamprey) [1096]

Lampetra fluviatilis (River Lamprey) [1099]

Alosa fallax fallax (Twaité Shad) [1103]

Salmo salar (Salmon) [1106]

Lutra lutra (Otter) [1355]

Phoca vitulina (Harbour Seal) [1365]

The Sow River is not designated as part of the Slaney River Valley SAC. The project could clearly have no impact on the designated SAC above the estuary as there is no hydrological or other pathway through which the afforestation could affect the upper parts of the designated SAC. Having regard to the distance to the estuary I consider that the relatively small-scale project proposed would not have any significant effect on the lower parts of the SAC.

The inspector noted in her assessment that the lands are located in an area sensitive to fisheries. Comments were sought and received from Inland Fisheries Ireland. (Comments received on 8 August 2019) The report from IFI points out that the Sow river is a tributary of the Slaney and that the Slaney and its tributaries are important salmonid spawning and nursery waters with excellent stocks of salmon, Brown trout, sea trout and lamprey. The report states that the soils in the area are peaty and subject to erosion. IFI was concerned about the danger of soil erosion and stated that it is important that there are adequate buffer zones provide along water courses. I consider this to be a localised issue which would not impact on the SAC having regard to its qualifying interests, the fact that no part of the Sow river is included in the SAC and the distance from the project lands to the estuary. In the circumstances I consider that the project is not likely to have any significant effect on the designated Slaney River Valley SAC.

The Screen Hills SAC is located, at the nearest point, about 7.34 kilometres to the southeast of the project lands. The eastern part of the SAC is located in the catchment of the River Blackwater (Wexford) as defined on the EPA maps. The western part is in the catchment of the River Sow/Coastal as defined in the EPA maps. This part of the SAC, however, drains to a river catchment which flows into the Slaney estuary below the location where the Sow river joins the estuary. There is accordingly no hydrological connection between the project lands and the SAC.

The Screen Hills SAC has as its qualifying interests the following habitats

Oligotrophic waters containing very few minerals of sandy plains (*Littorelletalia uniflorae*) [3110]

European dry heaths [4030]

Having regard to the absence of any hydrological or other potential impact pathway, and the separation distance, the proposed project is not likely to have any significant effect on the Screen Hills SAC.

The Raven SPA is located on the east coast of Co. Wexford to the southeast of the project lands. This SPA is located to the north of the Wexford Harbour and Slobbs SPA. The Raven SPA is at its nearest point about 9.2 kilometres from the project lands. The special interests of this SPA are

Red-throated Diver (*Gavia stellata*) [A001]

Cormorant (*Phalacrocorax carbo*) [A017]

Common Scoter (*Melanitta nigra*) [A065]

Grey Plover (*Pluvialis squatarola*) [A141]

Sanderling (*Calidris alba*) [A144]

Greenland White-fronted Goose (*Anser albifrons flavirostris*) [A395]

Wetland and Waterbirds [A999]

The project lands are not the type of habitat required by the wetland and water-birds for which the SPA has been designated. The proposed project is accordingly not likely to result in any significant effect on The Raven SAC.

The Wexford Harbour and Slobbs SPA is located at the closest point about 7.4 kilometres to the west of the project lands. The nearest point is a location in the river valley to the south of Enniscorthy. I estimate a minimum distance of about 9.3 kilometres to the nearest part of the main estuary to the south.

The qualifying or special interests of the Wexford Harbour and Slobbs SPA are:

Little Grebe (*Tachybaptus ruficollis*) [A004]

Great Crested Grebe (*Podiceps cristatus*) [A005]

Cormorant (*Phalacrocorax carbo*) [A017]

Grey Heron (*Ardea cinerea*) [A028]

Bewick's Swan (*Cygnus columbianus bewickii*) [A037]

Whooper Swan (*Cygnus cygnus*) [A038]

Light-bellied Brent Goose (*Branta bernicla hrota*) [A046]

Shelduck (*Tadorna tadorna*) [A048]

Wigeon (*Anas penelope*) [A050]

Teal (*Anas crecca*) [A052]
Mallard (*Anas platyrhynchos*) [A053]
Pintail (*Anas acuta*) [A054]
Scaup (*Aythya marila*) [A062]
Goldeneye (*Bucephala clangula*) [A067]
Red-breasted Merganser (*Mergus serrator*) [A069]
Hen Harrier (*Circus cyaneus*) [A082]
Coot (*Fulica atra*) [A125]
Oystercatcher (*Haematopus ostralegus*) [A130]
Golden Plover (*Pluvialis apricaria*) [A140]
Grey Plover (*Pluvialis squatarola*) [A141]
Lapwing (*Vanellus vanellus*) [A142]
Knot (*Calidris canutus*) [A143]
Sanderling (*Calidris alba*) [A144]
Dunlin (*Calidris alpina*) [A149]
Black-tailed Godwit (*Limosa limosa*) [A156]
Bar-tailed Godwit (*Limosa lapponica*) [A157]
Curlew (*Numenius arquata*) [A160]
Redshank (*Tringa totanus*) [A162]
Black-headed Gull (*Chroicocephalus ridibundus*) [A179]
Lesser Black-backed Gull (*Larus fuscus*) [A183]
Little Tern (*Sterna albifrons*) [A195]
Greenland White-fronted Goose (*Anser albifrons flavirostris*) [A395]
Wetland and Waterbirds [A999]

The project lands do not contain the type of habitats required by the wetlands and water birds for which the SPA has been designated. Having regard to this and to the distance of the lands from the SPA I consider that the project would not be likely to have any significant effect on the SPA.

The Department in its submission does not refer to any specific 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 and would not have any significant in-combination effects with other forestry developments.

On checking recent planning permissions for development in the vicinity nothing of note arises. There have been several permissions for individual houses particularly along the Enniscorthy regional road and a couple also on or close to the local road to the east. Other permissions include an extension to a school in the village to the northeast of the project lands, permission for farm buildings on lands to the southeast and permissions for small scale modifications etc in house curtilages. None of the planning permissions are located in close proximity to the project lands which are set back a considerable distance from any public road. I consider that the proposed afforestation would not have any in-combination or cumulative effects with any of the developments for which planning permission was recently granted

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. Wexford development plan. Some lands to the north of the regional road (R 744) including Slievenagora and Oulart hills are indicated on map 13 of the development plan as landscapes of greater sensitivity. The forestry proposed would not have a significant effect on views from public roads as the project lands are set back from public roads and the planted area would blend in with other forested areas. The proposed plantation may 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. I consider that the tree planting proposed would not have a significant impact on the landscape, by itself or cumulatively with other developments.

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 (referred to above) raises no objection in principle to the proposed afforestation although it raised concerns about the danger of soil erosion and recommends adequate buffer zones from water courses. 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 sites are the site of a possible church/graveyard in a forested area to the north and the site of a holy well (St Brigit's well) to the southeast. These are located 400/500 metres away. The proposed afforestation 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 about one sixth 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

31/5/2020

