

Coogan, Mary

From: Coogan, Mary
Sent: Wednesday 8 June 2022 13:00
To: forestry agriappeals
Cc: Connaire, Daniel; OBrien, MichaelG; Forestry Support Unit; Coogan, Mary
Subject: DAFM Statement FAC029/2022 CN85792
Attachments: DAFM Statement FAC029/2022 CN85792

Please note that DAFM Statement FAC029/2022 CN85792 (Coillte) has been uploaded to FAC Cloud Link today. The COPY File CN85792 has also been uploaded to Cloud.

The **District Inspector** would like to request an in person oral hearing for this appeal.

Regards,

Mary Coogan,

Forestry Support Unit.

Mary Coogan
Forestry Division, Approvals,
Rannóg/Seirbhís Foraoiseachta, Rannóg Cheadúchan,

An Roinn Talmhaíochta, Bia agus Mara
Department of Agriculture, Food and Marine
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Forestry Division Statement to the Forestry Appeals Committee

FAC Reference	FAC029/2022
File Reference	CN85792
Scheme	Afforestation without Grant Aid
Species proposed	GPC 3
Approved Area	6.09 hectares

Summary of application:

Date Submitted	29/01/2020
Site Notice date	18/05/2021
Date Application Advertised	28/05/2021
Referrals to referral bodies	No Referrals required
Date Referred to Inspector	27/05/2021 - Certified 28/05/2021 31/05/2021 - Certified 11/03/2022 Inspect at 1 st Instalment
Desk Assessment/Desk & Field Assessment	Field & Desk Assessment. "Field inspected 01/06/2021, 01/03/2022 added due to iforis limits."
Submissions Received	None
Appropriate Assessment Screening	Natura Site 1 - Screen Out: No likelihood of a significant effect on any European site, and Appropriate Assessment not required.
Recommendation from Inspector	Approve with Conditions
Decision	The afforestation project and all associated operations shall be carried out and completed in accordance with the measures set out in the Environmental Requirements for Afforestation and the Forestry Standards Manual (as amended by periodic Circulars). Reason: In the interest of clarity and to ensure good forest practice and the protection of the environment. - All existing trees and hedgerows within the site shall be retained. Reason: In the interests of protecting the character of the landscape and the protection of the environment, in particular, habitats for flora and fauna. Condition: Protect any upstanding structures or Old Ruins located at ITM Easting: 605068 Northing: 806316, a 10m wide unplanted buffer zone/setback should be

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	<p>established around any upstanding remains of the historic buildings/structures within and the proposed felling area.</p> <p>Reason: In order to safeguard buildings, structures, or features heritage interest on the site.</p> <p>Condition: A setback with a minimum width of 10 metres from the nearest waters edge shall be installed alongside the stream located to the south of the site a further 10 metres shall be pit planting only with no cultivation and treated in accordance with Table 5 and Table 6 of the Environmental Requirements for Afforestation. Plant an undulating band 5 to 8 rows deep of mixed native broadleaf species suited to the immediate site & Birch, rowan, willow, hawthorn hazel and oak where appropriate, along plots facing the adjoining water setbacks protect from grazing to ensure establishment.</p> <p>Reason: In the interests of protection of the environment, in particular the protection of water quality and aquatic ecosystems.</p> <p>Condition: Retain existing scrub habitat located ITM Easting: 605068 Northing: 806316 & ITM 605041,806242. A setback with a minimum width of 5 metres shall be installed along the existing scrub habitats.</p> <p>Reason: In the interests of the protection of the environment, in particular, existing habitats on site.</p> <p>Condition: A setback with a minimum width of 5 metres shall be installed on one side (if on the outer perimeter) or both sides (if traversing the site) of the relevant watercourse[s] a further 5 metres shall be pit planting only with no cultivation and treated in accordance with Table 5 and Table 6 of the Environmental Requirements for Afforestation.</p> <p>Reason: In the interests of protection of the environment, in particular the protection of water quality and aquatic ecosystems.</p>
Date Decision Issued	16/03/2022
Date Decision Advertised	16/03/2022

Administrative Comments:

The decision was issued in accordance with our procedures, S.I. 191/2017 and the 2014 Forestry Act.

Please see the statement from the Inspectorate.

Name: Mary Coogan

Grade: EO

Date: 07/06/2022

29 MAR 2022

Grounds for Appeal CN85792 Drumaragh, Leitrim

DAFM failed to make available the records for this application on the FLV and they were not made available on request to at least one third party that requested them.

Application

The Application is incomplete as it has not identified external hedgerow boundaries. This means the application is not compliant with 5 (2) of the Forestry Regulations. Also one internal hedgerow has not been clearly identified.

Hedgerow Setback is not defined leading to uncertainty over operational details. Hedgerows are identified as being 4m in width but no setback for the hedgerows is identified. A minimum setback of 7m is required to ensure that they are not degraded by shading - BIOFOREST Report.

Access

It is not clear how access will be gained to the site from the L3453. No public roads are marked on the BioMap - another error.

EIA Screening

The In combination statement identifies the River Sub-Basin Adhacashlaun_030, as having approximately 14% forest cover. There is a significant discrepancy between this figure and the 5.41% figure in the EIA Screening for the underlying waterbody.

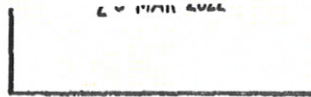
This implication of this discrepancy is exacerbated when it is considered that this project is in the RSB of the ADHACASHLAUN_030 - a waterbody that has not been assigned a water quality status by the EPA under the 2nd cycle of the WFD. Based on the Judgement in the JR of Case 740 2018 (Sweetman v ABP) a project cannot be awarded a licence where the Status of a water body which could be impacted by the project is unassigned as Member States are required under Article 4 of the WFD to refuse authorisation for an individual project where it may cause a deterioration of the status of the body of surface water or where it jeopardises the attainment of good surface water status or of good ecological potential and good surface water chemical status by the date laid down by the Directive.

"The WFD, as interpreted by the CJEU, requires a Member State to ensure that the requirements of Article 4 are met before permission is granted. It cannot be so satisfied in respect of development affecting a water body whose status has (in breach of the WFD and the implementing regulations in Ireland) not been assigned by the EPA." Hyland judgement

"The EPA as the relevant authority in Ireland have an obligation to carry out the analysis required by Article V of the WFD in respect of surface water bodies and determining their status. If, as in the instant case, it does not fulfil its obligation in respect of any given surface water body, its failure to do so unfortunately has implications for any application for permission that potentially affects that water body." Hyland judgement

That is the case with this felling licence. It is hydrologically connected to an EPA mapped water body and there are requirements relating to water quality included in the licence.

The issue is not whether this project is of a similar nature to that in the Hyland judgement. The issue is a very simple one - does this project have the potential to impact on water quality? If the answer is Yes then consent cannot be awarded consistent with the Hyland judgement.



Part of the site (SW) is on deep peat. Since the project area "is crossed by / adjoins an aquatic zone(s)" (AA Screening) the potential for impact exists. This is confirmed by the identification of a number of locations for additional silt traps on the BioMap and the Condition in the licence

"Condition : A setback with a minimum width of 10 metres from the nearest water's edge shall be installed alongside the stream located to the south of the site a further 10 metres shall be pit planting only with no cultivation and treated in accordance with Table 5 and Table 6 of the Environmental Requirements for Afforestation. Plant an undulating band 5 to 8 rows deep of mixed native broadleaf species suited to the immediate site (Birch, rowan, willow, hawthorn hazel and oak where appropriate, along plots facing the adjoining water setbacks protect from grazing to ensure establishment.

Reason: In the interests of protection of the environment, in particular the protection of water quality and aquatic ecosystems."

So the answer to the question "does this project have the potential to impact on water quality?" is Yes and the Hyland judgement applies. DAFM cannot address matters to do with water quality because no baseline Status exists against which any measures to protect water quality can be validated.

This is the last piece in the jigsaw of forest cover for the area.

The % forest cover in the immediate vicinity of this project is very high and the EIA screening figure of 37.8ha within a 500m radius is highly misleading. The attached image clearly indicates that the extent of afforestation within a 500m buffer of the site is well in excess of 50ha (Private -purple; Coillte Green) all established since 1993 (during the period of the existence of the EIA Directive).

The implication of the response to "Does this application, together with other Form 1 applications within 500 metres and recommended for approval but not yet planted, constitute an area 50 ha or greater" at 32.74 ha implies that there is other potential afforestation in the pipeline for the area.

challenges the 'No' response to "Is the amount and type of forest cover in this locality known to be a significant issue?" Coniferous afforestation is an issue county wide. If the Inspector is not aware of this then he / she is not in a position to provide a valid response to this question.

The No response to "Does the application and its associated operations threaten the achievement of 'good ecological status' recovery objective set for the underlining waterbody or waterbodies under the WFD River Basin Management Plan?" does not reflect the facts. If additional silt traps are needed then the project, without mitigation, does threaten the achievement of the relevant water quality objectives under the WFD. The question does not make any reference to mitigation. The fact that impacts on water quality cannot be validated is the reason that this project should not have been given consent.

The 'Yes' response to "Will adherence of this proposal to the Forestry and Water Quality Guidelines, and any additional conditions attached to the approval be sufficient to prevent any potential significant impact to aquatic zones and their Q value", cannot be validated and cannot be considered to be an accurate and verifiable response to the question.

A Forestry Inspector is not suitably qualified to give a definitive response to the question "Is the forest design submitted (and any additional design improvements recommended) sufficient to prevent any significant impact on the landscape and does the design comply with the Forestry and the Landscape Guidelines?"

The Local Authority, which would have competence in this sphere, was not even consulted.

The Determination of the Inspector cannot be relied upon based on the errors, uncertainties and the inadequacy of the geographic and temporal scope of the cumulative impact assessment.

AAS

The AA Screening conclusion (of an unnamed party) for Cuihcagh Anierin SAC does not provide the necessary certainty required by such a Determination.

"I conclude that it can be excluded, based on objective scientific information, that the project itself (i.e. individually) will not have a significant effect on this European Site, due to the following findings:

The position of the project area downstream from the Natura site, and the subsequent lack of any hydrological connection."

The QI of the SAC are terrestrial habitats not aquatic features therefore the basis for screening out is not complete.

We don't know from the project documentation who 'I' is. Is it an ecologist or a clerical officer? Determinations relating to Article 6 (3) of the Habitats Directive need to be made by a competent individual and this needs to be evidenced.

Oral Hearing

would like to request an oral hearing of this appeal.

Forestry Appeals Committee

29 MAR 2022

Statement from Inspectorate.

Assessment Criteria	
Was the AA screening procedure at the time of approval applied? (Y/N)	Yes
What version of the AA procedure?	Nov19
Standard Operating Procedures applied? (Y/N)	yes

Based on the information supplied by the appellant, do you recommend any change to the original decision?

(Tick as appropriate)

No change	<input checked="" type="checkbox"/>	Confirm recommendation to grant licence	<input checked="" type="checkbox"/>	Revise conditions of licence	<input type="checkbox"/>	Remit licence for reassessment	<input type="checkbox"/>	Revoke licence	<input type="checkbox"/>
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- The FORESTRY REGULATIONS 2017 state under Part 3 Control of Afforestation section 2 point (a) that “ an Ordnance Survey map or other map acceptable to the Minister, with the boundary of the land to which the application relates, and all internal plots, where applicable, delineated and shall clearly show the following details—

 - (i) public roads,
 - (ii) forest roads,
 - (iii) aquatic zones,
 - (iv) wayleaves,
 - (v) archaeological sites or features,
 - (vi) hedgerows, and
 - (vii) any other features which may be relevant to the application,

The public road is clearly shown on aerial image road on the supplied bio map as well as the site notice location on the public road. This was considered acceptable to the minister when making the decision. Additionally, hedgerows are also clearly shown and marked. Site field inspected on the 01/06/2021.
(Emphases my own)
- Applicant in full ownership of lands bordering the application area which extends to the public road.
- DAFM accepts that there is a discrepancy between the EIA waterbody forest cover figure 5% and the in combination statement figure 14% however EIA data on percentage forest cover are indicative and can never be 100% accurate. The inspector is required to use his judgement and in this case was not deemed to be an issue due to the minor discrepancy and approval was warranted. The noted minor difference in forest cover did not impact the EIA screening process or final licencing decision.

4. Regarding water quality, ADHACASHLAUN_030 has been assigned a water status by the EPA, this project does not jeopardise the potential attainment or retention of a "good" status. This project proposes 6.09ha of GPC3 Sika fertiliser input is not proposed. Project to adhere to the measures set out in the Environmental Requirements for Afforestation and the Forestry Standards Manual. A 10m water set back with an additional 10m of pit planting with no cultivation or drainage works is a condition of approval. Lower portions of the site consist of a peaty gley in parts, relevant watercourse identified have a 5m setback and an additional 5m of pit planting with no cultivation or drainage is a condition of approval.
5. Regarding Q11 of the EIA screening, no submissions were made of the licence application locally or otherwise. There were no objections (or appeals) from anyone living in the vicinity of this site. It is unclear from the appeal if anyone from the Save Leitrim group lives close to this site or if they represent anyone living in the area. There are no houses evident in the vicinity of the proposal. DAFM maintain that forest cover is not an issue here.
6. With relation to Landscapes, the Department of Agriculture Food and the Marine is the Competent Authority regarding the issuing of forestry licences.
7. AA screening process followed standard operating procedures.
8. DAFM would like to request an in person oral hearing.

Name: Daniel Connaire

Role: Forestry Inspector

Date: 26/05/2022