

Coogan, Mary

From: Coogan, Mary
Sent: Friday 16 September 2022 17:33
To: forestry agriappeals
Cc: Hennessy, NiamhM; OBrien, MichaelG, Forestry Support Unit, Coogan, Mary
Subject: DAFM Statement FAC079/2022 CN88472
Attachments: CN88472 DAFM Statement FAC079 2022.docx

Please note that DAFM Statement FAC079/2022 CN88472 has been uploaded to FAC Cloud Link today.

Please note that no copy file is provided as IFORIS documentation is visible for this contract.

Regards,

Mary Coogan,

Forestry Support Unit.

Mary Coogan
Forestry Division, Forestry Support Unit,
Rannóg/Seirbhís Foraoiseachta, Rannóg Cheadúchan,

An Roinn Talmhaíochta, Bia agus Mara
Department of Agriculture, Food and Marine
Eastát Chaisleán Sheonach, Contae Loch Gorman, Y35 PN52
Johnstown Castle Estate, Co. Wexford, Y35 PN52

+353 (0)53 9170357
mary.coogan@agriculture.gov.ie
www.agriculture.gov.ie +353 (0)761 064415



Forestry Division Statement to the Forestry Appeals Committee

FAC Reference	FAC079/2022
File Reference	CN88472
Scheme	Afforestation
Species proposed	GPC 9 - NWE
Approved Area	11.94 hectares

Summary of application:

Date Submitted	11/03/2021
Site Notice date	15/03/2021
Date Application Advertised	21/04/2021
Advertised for 2 nd Public consultation	Not applicable
Referrals to referral bodies	Carlow County Council 21/04/2021 - Reply 19/05/2021 (Scan 24/05/2021) [(Transport Infrastructure Ireland (TII) 18/10/2021 – TII Reply Letter - Scan 15/11/2021 + Email 16/11/2021 (Scan 17/11/2021))] An Taisce 21/04/2021 - Reply 18/05/2021 (Scan 18/05/2021) National Parks & Wildlife Service 21/04/2021 – Reply 16/06/2021 (Scan 17/06/2021)
Referral to Archaeology	Report 22/07/2021 (Agreed with National Monuments Service 06/08/2021)
Referral to Ecology	Appropriate Assessment Pre-Screening Report 16/04/2021 - submitted on behalf of applicant Appropriate Assessment Screening Report & Determination 17/06/2022 by Manus Crowley Ecologist, Enfor Ltd., on behalf of DAFM
Date Referred to Inspector	21/04/2021 - Certified 15/10/2021 15/11/2021 - Certified 30/12/2021 17/01/2022 - Certified 19/01/2022 20/01/2022 - Certified 24/01/2022 10/03/2022 - Certified 22/06/2022

Desk Assessment/Desk & Field Assessment	Field and Desk Assessment 24/01/2021. SMS sent 07/10/2021 Field and Desk Assessment 24/03/2022
Submissions Received	10 submissions – 18/05/2021 x 1, 19/05/2021 x 2, 20/05/2021 x 5, 21/05/2021 x 1, 24/05/2021 x 1 (Fee paid),
Appropriate Assessment Screening	Natura Site 1, 2.- Screen Out: No likelihood of a significant effect on any European site
Recommendation from Inspector	Approve with conditions
Decision	<p>5. Any additional conditions, that are over and above what is specified in the application.</p> <p>- Adhere to Archaeology report</p> <p>The following specific archaeological requirements shall be fully complied with ;</p> <p>a) A structured programme of archaeological monitoring is required for all afforestation ground preparation and drainage works undertaken in conjunction with the project; and with a report on the same, any discoveries and any subsequent archaeological work supplied to the Forest Service, DAFM, the National Monuments Service, DHLGH, and the National Museum of Ireland;</p> <p>b) See attached archaeological report and illustrative map for further details.</p> <p>Reason: In order to safeguard the archaeological heritage adjacent the site and to ensure the identification, recording, further preservation and protection as appropriate, of any other archaeological remains (including low visibility or subsurface remains) that may exist within the site.</p>
Date Decision Issued	23/06/2022
Date Decision Advertised	24/06/2022

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: 16/09/2022

- v. Transparency and openness in the use of personal data is important to the FAC which aims to fully inform all its customers about the purpose(s) for which their data will be used and why, where it may be shared elsewhere and why and how long their data may be held by the FAC. This information and the information on the rights of customers who provide personal data to the FAC are detailed in the data protection section on the Appeals Office's website www.agriappeals.gov.ie.
- vi. Personal data processed by the FAC will only be used for the specific purpose(s) as outlined when the data is collected (Notice of Appeal Form) and as outlined in detail in the data protection section on the Office's website www.agriappeals.gov.ie.
- vii. Please be advised that if you are attending the Agriculture Appeals Office, Kilminchy Court, Portlaoise, Co. Laois, R32 DTW5 that CCTV is in operation for the security and safety of visitors and staff. More information is in the data protection section on the Office's website www.agriappeals.gov.ie.

14. Appellant's Grounds and Statement (additional pages may be included if required)

Please find attached letter with attachments for comprehensive grounds and statements, as basis for my appeal. This appeal is also supported by Ballygowan - Tramad Lwr. residents, who also share same concerns, as per enclosed letter of appeal and attachments.

15. Declaration

By signing the declaration below you are making an appeal against the decision referred to in this Notice of Appeal Form and declaring that your appeal details may be provided to other relevant parties and may be included in the record of and read publicly at any oral hearing held for this appeal and may be published.

I declare that the information contained in my appeal is true and accurate and that I have read and accept the rules governing the submission and processing of appeals by the Forestry Appeals Committee including Sections 14 A to 14F of the Agriculture Appeals Act, 2001, the Forestry (Miscellaneous Provisions) Act, 2020 and the Forestry Appeals Committee Regulations 2020.

Signature of Appellant _____

Date:

Version 10/08/2021

5 / 7 / 2022

Forestry Appeals Committee

7 JUL 2022

**Forestry Appeals Committee
Agriculture Appeals Office
Kilminchy Court
Portlaoise
Co. Laois
R32 DTW5**

Date: 4th of July 2022

**Ref. CN88472, Tomard lower, Ballygowan, Carlow
SUBMISSION OF APPEAL**

We the residents strongly appeal to the decision to grant an afforestation licence at Tomard Lower, Ballygowan, Co. Carlow reference number CN88472.

We also wish to register our disappointment at only being allowed 14 days to gather information and submit an appeal when there seemed to be no time limit in relation to approval the licence.

The reasons for our appeal are:

Notice of Approval

The notice of approval of the licence dated 23/06/2022 has stated that there are no conditions to approval despite the proposed site being in extremely close proximity to the River Barrow SAC, M9 Motorway and residential houses with a number of concerns raised by An Taisce, Carlow County Council and Transport Infrastructure Ireland seemingly unaddressed.

We also noted that despite the site being located right beside a Special Area of Conservation, the National Parks and Wildlife Service had no comment to make which we find strange.

Residential Houses

The area surrounding the proposed site of the afforestation is densely populated. There are 11 houses and 35 people within 400 meters of each other and all these dwellings will be directly and adversely affected by this afforestation which is planned to take place on the opposite side of the road to the dwellings. There is currently already a forest to the rear of the dwellings and with the addition of this proposed afforestation there will be a disastrous impact on light levels to the residents. As the sun rotates around the dwellings the sun is already currently blocked in the evening by the forest to the rear of the properties. The planting of trees directly opposite the dwelling will result in no direct sunlight all day. This is

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not acceptable and highly unfair that people's lives will be impacted this severely as some of the houses and residents have been there for over 80 years. Please see Appendix A on how much a shadow is cast on the current treeline which borders the river. As you can see there is a significant shadow cast.

Under the Forestry and the Landscape Guidelines it is stated that "set back distance is most critical when a building is surrounded by forest on two sides". This proposed afforestation will mean forestry to the front and the rear of the dwellings and with global warming and the increased number of forest/gorse fires which have been happening recently, this afforestation will pose a real health and safety risk for the community.

We also believe that as part of the application process all households should be contacted and provided with information on the proposed afforestation in line with the Forestry and the Landscape Guidelines. We can confirm not all households directly impacted by the proposed afforestation were contacted and the forest developer refused to answer all questions in relation to the households they did meet. No household has seen any proposed site plans. Also no household was afforded the opportunity to a make a submission on the Appropriate Assessment.

The site also has a prominent hill which is close proximity to the dwellings. Planting on this hill will mean the trees will have an extreme effect of feeling of enclosure for the residents. Please see Appendix B.

The landowners also do not live in the area and therefore will not be impacted by this afforestation.

Landscape Concerns

As per the Carlow County Landscape Character Assessment, the site is located within a 4 (out of 5) rated sensitive area. Carlow County Council raised landscape concerns and we feel the decision to approve this afforestation does not take their concerns into account. Carlow County Council stated that forestry plantations should be carefully laid out to sit in the natural contours and boundaries of the landscape. We believe that this afforestation will contravene this. In addition, the Carlow County Landscape Character Assessment identified a feasibility study into "a Barrow Heritage Drive" which would likely use the road adjacent to the site. The proposed afforestation would block the only panoramic view of the central lowlands and Mount Leinster along the road. The Forestry and the Landscape Guidelines states "along scenic routes, it is therefore necessary to retain a reasonable number of views throughout the full rotation, for the benefit of the

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road users.” The afforestation licence approval is therefore in direct contradiction to the The Forestry and the Landscape Guidelines.

Appropriate Assessment Screening Report & Determination

The Appropriate Assessment Screening conclusion identified that the project should be “screened out” in part due to the lack of hydrological pathway to the aquatic zone. We would argue that there is a hydrological pathway through ground water to the River Barrow SAC which is directly beside the site. The site is located within a groundwater body at risk area within the 3rd Cycle Draft Barrow Catchment Report. Please see Appendix C. In addition, there is a drain along the rear of the site which is parallel to the site and the River Barrow. Due to the contours of the land, water is drained from the site into this drain that is parallel to the River Barrow. This drain then feeds into the river. To say there is no hydrological pathway is a incorrect statement.

In addition a summary of the Initial Characterisation of the Bagenalstown GWB which the site is part of identifies that “ it is probable that the bulk of the discharge from the aquifer enters the river in the lower section between Milford and Bagenalstown”. The site is located within this area and adjacent to the river so it is reasonable to assume there is discharge from the site to the river.

We believe that the project has been screened out incorrectly and a full assessment is required.

Also within the Appropriate Assessment Screening Report & Determination (Section 3) the concerns of Transport Infrastructure Ireland were not taken into account despite requests from the TII dated 16/11/21 that their issues be taken into consideration. In addition there is no evidence of consultation with either Carlow County Council or Egis Lagan Services despite recommendations from TII.

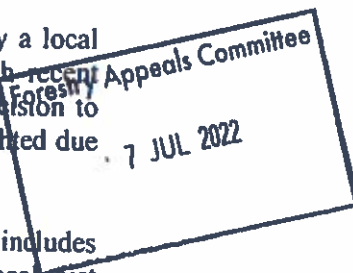
In summary, we believe that the project was approved even through it failed to carry out a proper AA and failed to properly screen for EIA.

Current Land Use

The land was recently rented and actively farmed by a local farmer. The land is good agricultural land and with recent reports of world food shortages it seems that the decision to convert good agricultural land to forestry is short sighted due to the rising levels of food insecurity.

Conflict of Interest

The land is owned by the Dowling Family which includes Lisa Dowling. Ms Dowling is currently an approved ecologist for the Native Woodland Scheme. This is the same scheme which the land is currently being applied for grant aid. We are concerned that this conflict of interest may lead to public



funds being used to develop an afforestation in a site which otherwise may not have got approval.

Appendix A: Shadows currently cast by trees alongside river.



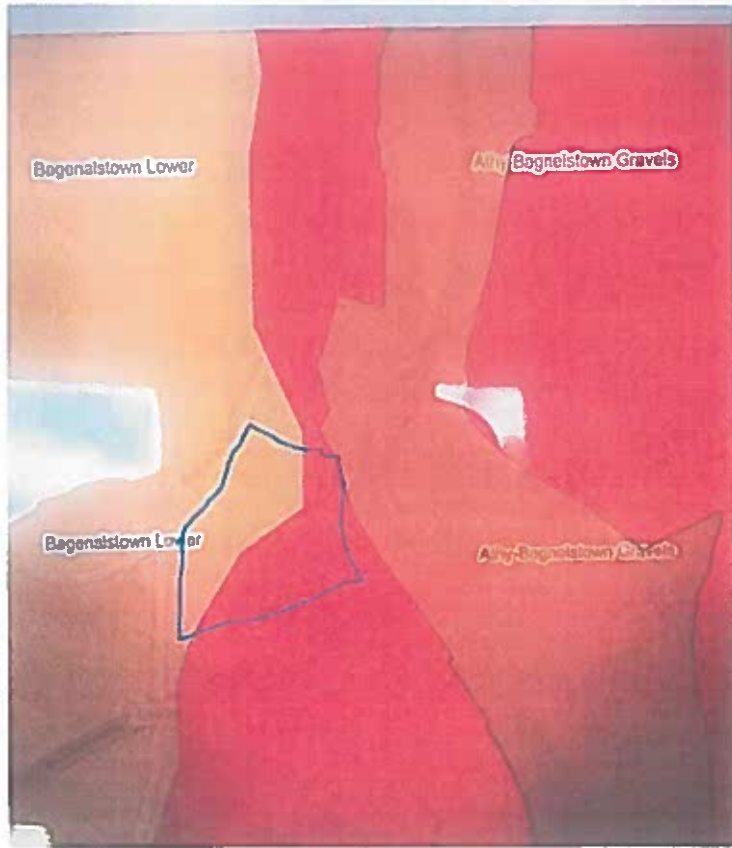
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Appendix B: Hill at site in close proximity to dwellings.



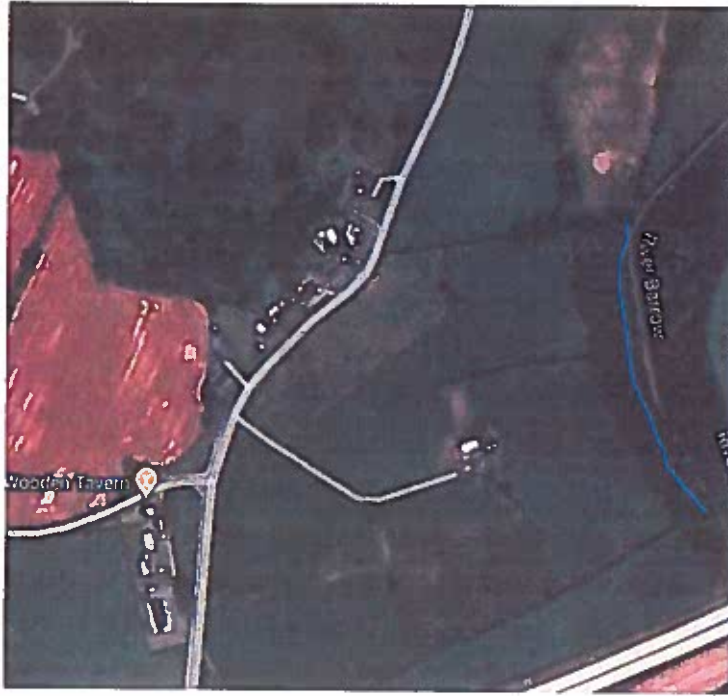
Appendix C: Location of site within at risk groundwater body.

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Note location of Drain in blue.

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Statement from Inspectorate.

Assessment Criteria	
Was the AA screening procedure at the time of approval applied? (Y/N)	Y
What version of the AA procedure?	Nov 19
Standard Operating Procedures applied? (Y/N)	Y

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

(Tick as appropriate)

No change	Y	Confirm recommendation to grant licence		Revise conditions of licence		Remit licence for reassessment		Revoke licence	

I was assigned this application from my manager Ciaran Nugent Regional Inspector. I reviewed each individual submission, issues raised and considered these. With regard to 3rd party issues, a 60m setback from the dwelling houses, public road corridor setback and the nature of the planting being a native woodland proposal is sufficient to address the concerns raised as per the standards for Afforestation. Standard conditions would be sufficient to provide for all environmental conditions at this location and no site-specific conditions were required other than Archaeology. The site was screened in and referred to Ecology for assessment. I have received the screen out recommendation from Ecology. All relevant authorities were notified, and their responses were reviewed and considered.

Point 1 -Notice Of Approval: "The Statutory Deadline for Receipt of Appeals for any decisions issued by the Minister for Agriculture, Food and the Marine (DAFM) are subject to the statutory 14-day deadline."

Point 2-Residential Houses: In order to address the concern you have raised regarding the potential impact of the proposed afforestation on light entering your property, appropriate dwelling house setbacks of 60m will be installed as per Environmental Requirements for Afforestation as a condition of this approval.

Point 3- Landscape Concerns: The road setback will comprise 10m of open space and immediately adjoining this will be 10m of broadleaves. Broadleaves are to be planted adjoining the road setback, adjoining the water setback and adjoining the utilised building setbacks

Point 4 – AA Screening Report & Determination: "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)."

Point 5 – Current Land Use: The Department of Agriculture, Food & the Marine offer the afforestation scheme to all landowners who wish to avail of it.

Point 6- Conflict of Interest: "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)."

Name: Niamh Hennessy

Role: Forest Inspector

Date: 19/07/2022