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25th January 2021

Subject: Appeal FAC188/2019 regarding licence CN83274

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 CN83274 for 17.22 ha of afforestation at Aghagrania, Co. Leitrim was approved by the Department of Agriculture, Food and the Marine (DAFM) on 12th July 2019.

Hearing

An oral hearing of appeals FAC187/2019 and FAC188/2019 was held by the FAC on 13th January 2021. In attendance:

FAC Members: Mr. John Evans (Deputy Chairperson), Mr. James Conway, Mr. Seamus Neely,
Mr. Vincent Upton

Secretary to the FAC: Ms. Marie Dobbyn

Appellant FAC188/2019: [REDACTED]

Appellant FAC187/2019: Not present

Applicant: Not present

DAFM Representatives: Mr. Seppi Hona, Ms. Mary Coogan

Decision

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notice of appeal, submissions made at the oral hearing and all other submissions received, and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to set aside and remit the decision of the Minister regarding licence CN83274.

The licence decision pertains to 17.22 ha Aghagrania, Co. Leitrim. The land is described as enclosed agricultural land with a grass, grass/rush, heather and furze vegetation type. Proposed species are Sitka spruce, birch, Scots pine and rowan. The application was referred to An Taisce which did not respond and to Leitrim County Council which stated that the proposal is in an area of High Visual Amenity and

with a low capacity to accommodate forestry under the County Development Plan and that they object to the application. The DAFM recorded an Appropriate Assessment screening of the proposal and determined that it did not require an Appropriate Assessment. It further recorded a consideration of the application for EIA and determined that it did not need to proceed to the EIA process. Site preparation would be through mounding and pit planting and no fertiliser or additional drainage is proposed. Weed control would be through woody weed removal and herbicide use in years 0-3.

The approval was issued on 12th July 2019 with conditions including additional environmental and silvicultural conditions including:

- This application is approved in strict adherence to the submitted biomap and landscape plan dated 28/6/19,
- No machinery allowed within buffer zone setbacks at any stage,
- Ensure drainage works and silt control measures are implemented as per Forest Standards Manual,
- Adhere to Environmental Requirements for Afforestation,
- All guidelines to apply

Two appeals were made against the decision. FAC187/2019 submitted grounds that the proposed planting is immediately adjacent to Cuilcagh-Anierin Uplands SAC and there is connection between the SAC and the proposed afforestation. Forestry activity would impact on the streams and rivers which arise on the bog or from the rock underlying it and potentially destabilise the bog and that an appropriate assessment should be carried out. It is submitted that appropriate assessment screening should have been carried out on the original application rather than after modifications to the proposal has been made and refers to CJEU Case C-323/17. It is submitted that the application should take into account other afforestation proposals in combination with the licenced proposal and referral is made to CN83034 which is submitted to be some 50 metres from the proposal. It is submitted that the gradient would exacerbate the impacts on watercourses and that there is a risk of windblow. It is submitted that the proposal represents a reversion to planting practiced before EU legislation to protect the environment and the landscape and reference is made to the Florence Convention 20004 (sic) and that the grazing field system is unsuitable for planting commercial forestry. It is submitted that forestry activities on the site would significantly impact on general water quality and also on the quality of public drinking water in contravention of SI 272 of 2009 and SI 610 of 2010. The appeal included copies of maps of the area.

The grounds of FAC188/2019 submitted that the DAFM was required to refer the application to the NPWS and did not do so and that the afforestation adjoins an SAC and that the impacts of afforestation of these lands would have on wildlife is not known. It is submitted that no appropriate assessment or Environmental Impact Assessment was undertaken and that the Appropriate Assessment screening did not consider other plantations. Reference is made to another licence and concerns are expressed regarding impact on High Nature Value and the biodiversity of the lands. It is submitted that the County Council had objected to the proposal as it contravenes the County Development Plan and that the area

is of low capacity for further afforestation and areas above 300 metres should not be planted. It is submitted that the application is on lands which are in close proximity to a number of streams that are a source of drinking water and that no consideration is given to the fact and that there has been a breach of the EU Drinking Water Directive.

In a statement to the FAC, the DAFM submitted that it is satisfied that all criteria in its standards and procedures were adhered to in the making of the decision on the application. It is submitted that the DAFM procedures that were valid at the time were applied regarding appropriate assessment and that referrals to the NPWS were discretionary in this case. In relation to Cuilagh-Anierin Uplands SAC it is submitted that the proposed planting lies to the south and downhill of the SAC, that there is no hydrological connection and that no impacts can occur. It is submitted that the site was desk and field assessed and that there is a watercourse separating the water abstraction point from the proposal and that the area is currently grazed by sheep. It is submitted that the DAFM is the statutory body responsible for forestry licences and that the County Council had objected in relation to the County Development Plan. It is submitted that the mountain slopes are heavily forested, that the size and shape is in keeping with the similar plantations, that the forester produced a landscape plan to ensure that the proposal fits into the landscape. It is submitted that forestry has been an integral part of the landscape for many years and that the DAFM cannot find a reason to refuse the application on landscape grounds.

The FAC sought additional information from the DAFM regarding the consideration of other plans and projects in combination with the proposal and whether any mitigation measures proposed to avoid or reduce the likely effects of the proposed development on the environment were considered in the assessment. The DAFM responded that consideration was given to standards of good forest practice in the Appropriate Assessment Procedure employed at the time and that if the application was screened again today, under the revised Appropriate Assessment Procedure currently in use, it would not be screened out.

An oral hearing of the appeals was held which was attended by Representatives of the DAFM and the Appellant in FAC188/2019. The DAFM provided an overview of the processing of the application at the oral hearing. They submitted that a site inspection had been undertaken which found that the northern and western section of the original application for 23.76 ha were unsuitable for afforestation in line with the DAFM procedures regarding Land Types for Afforestation or fell within a water abstraction area. The Applicant was asked to amend their application to exclude these areas and a record of this request was provided to the FAC. It was submitted that in light of the location of the proposal and the observations made by the County Council a landscape plan was requested that identified the layout and planting schedule of the proposal and included the planting of broadleaves and diverse species to the south and on promontories on the site. It was submitted that the application had been assessed in line with the DAFM procedures of the time but that if it was assessed under current procedures that it would not be screened out for Appropriate Assessment. It was submitted that the record of the EIA consideration did not include forest areas due to a technical error. The Appellant in FAC188/2019 submitted that the County Council had objected to the application and that this was incorrectly recorded in the DAFM system. It was submitted that they visited the site and found the northern portion to be open moorland

that would be important habitat for species such as Curlew and Hen Harrier. It was submitted that the proposal should have been referred to the NPWS. It was submitted that another portion of land close by was licenced and that the application had been divided.

The FAC considered in the first instance the Appropriate Assessment screening undertaken by the DAFM and the grounds that relate to the same. The boundary of the Cuilcagh Anierin Uplands SAC lies c.200 metres to the north-east of the site. Following inspection of the lands the DAFM determined that the northern and western portion of the original proposal should be excluded on the basis of being unsuitable and/or within a water abstraction zone. A record was kept of this request and provided to the FAC. The FAC are satisfied that the reasons provided for the exclusion of this area are in keeping with Good Forest Practice and Government Policy. This area also appears to be part of the open moorland habitat referred to by an Appellant. However, there is no record of the consideration of other plans and projects in combination with the proposal in assessing its likely significant effects on a European site. In addition, the DAFM submitted that the screening undertaken had taken account of standards of good forest practice in terms of their potential to avoid or reduce the likely effects of the proposed development. The FAC considers that a new screening for Appropriate Assessment is required in this case.

Regarding Environmental Impact Assessment (EIA) and related matters. The EU EIA Directive sets out in Annex II 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. 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. While a second application in the area was queried in relation to suggesting division of application it was submitted to be c.6 ha. There is no convincing evidence before the FAC that these applications are related, however, even if they were made by the same Applicant on adjoining land the combined area would be significantly below the threshold for the mandatory submission of an EIAR and the DAFM is required to consider cumulative effects in its assessment as the competent authority for afforestation licences.

The areas of recent afforestation and forest cover were not recorded in the EIA consideration undertaken by the DAFM, while it was submitted at the oral hearing that they were considered. While not within the EIA section, the records maintained by the DAFM suggest that the County Council had not objected to the application which is not correct. In addition, a number of recorded responses regarding EIA considerations were incomplete. While noting the field assessment and alterations to the proposal, including reduction in area and landscape planning, the FAC considers that the EIA consideration record contains a series of errors. As a result the FAC, concluded that a new assessment to determine whether an EIA is required should be undertaken and recorded by the DAFM regarding this proposal.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal, and submissions received including at the oral hearing. The FAC is satisfied that a series of errors were made in making the decision regarding CN83274 and is setting aside and remitting the decision back to the Minister to undertake an appropriate assessment screening of the proposal itself and in combination with other plans or projects under Article 6 of the EU Habitats Directive and a new assessment to determine whether the application should be subject to the EIA process under the EU EIA Directive before a new decision is made.

Yours sincerely,

A large black rectangular redaction box covering the signature of Vincent Upton.

Vincent Upton On Behalf of the Forestry Appeals Committee

