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24/2/2020

Our ref: FAC 094/18

Subject: Appeal in relation to afforestation licence CN80620

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine on licence CN80620.

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 the parties to the appeal.

Background

Afforestation licence CN80620 was granted by the Department on 28 March 2018.

Hearing

An oral hearing was conducted by the FAC on 4 February 2020 at the Agriculture Appeals Office, Kilminchy Court, Portlaoise, Co. Laois.

In Attendance at Oral Hearing:

FAC Members:	Mr. Des Johnson (Chairperson), Mr. Pat Coman, Mr. James Conway & Mr. Vincent Upton
Appellants:	Not present
Applicant:	Not present
Department Representatives:	Mr. Seppi Hona & Mr. Colin Gallagher
Secretary to the FAC:	Ms. Ruth Kinehan

Decision

Having regard to the evidence, written and oral, before it and, in particular, the following considerations, the FAC has decided to confirm the decision of the Minister regarding licence CN80620:

- o The FAC has no role in the formation of forest policy which, under law, is the responsibility of the Minister for Agriculture, Food and the Marine. The FAC can address only matters relating to the licence in question. Likewise, the FAC has no role regarding concerns raised in relation to climate change/action; these are also policy issues and are the responsibility of the Minister for Communications, Climate Action and Environment.
- o Public consultation in the case of the licence application was provided for through (i) the erection of the site notice, with the location of it marked on the biodiversity map submitted and found in place and compliant with the Department's guidelines on the Department's inspection, (ii) the posting of summary details of the application on the website of the Department of Agriculture, Food and the Marine and (iii) the facility provided for submission/objection to the Department by any party before the Department's decision on the licence application as required under SI 191 of 2017, Forestry Regulations 2017. There were five objections to the application.
- o The appellants have been provided by the FAC with the full Department's statement on the appeal.
- o The proposal site is not located within Gubs townland.
- o Clear-felling of this project will have to comply with legal requirements in place at that proposed time and cannot be adjudicated upon in this decision.
- o A condition of the licence at appeal is compliance with Departmental guidelines and requirements for Landscape, Water Quality, Harvesting, Biodiversity and Archaeology. A further condition is to 'Adhere to Environmental Requirements for Afforestation'. Furthermore, the application of fertilisers and herbicides is subject to Forest Protection Guidelines which exclude application within aquatic buffer zones. The Department's Guidelines in their *'Forestry Standards Manual; November 2015'* and their other mandatory Guidelines have been developed and informed by relevant research field trials over many years, including HYDROFOR. These provisions are considered adequate in this case.
- o A condition of this licence is that 15% additional broadleaves are required and to consist of P. Oak, Rowan & Birch (No Alder). Also all hedgerows and existing trees are to be retained as per the biodiversity map submitted with the licence application.
- o The Teagasc Technology Update of October 2016 outlined the project *'Estimating the distribution of High Nature Value farmland in Ireland'* (Project dates Jan 2013 – Mar 2016). However, there has been no overall definitive classification and mapping exercise completed on High Nature Value land (HNV) in the EU and the legislative protection for HNV farmland in Ireland is confined to restrictions on certain activities on protected sites. The site at appeal is not such a site.
- o In respect of the Meadow Pipit, Cuckoo, Skylark and Snipe, the policy of the Department outlined in its publication *'Using Vegetation to assess Land Suitability, 2016'* is to restrict the afforestation of unimproved or unenclosed land. This policy has the effect of preserving ground-nesting habitat, foraging habitat and associated flora and fauna in non-designated areas. The land within CN80620 is enclosed agricultural land. This policy is respected in this instance.

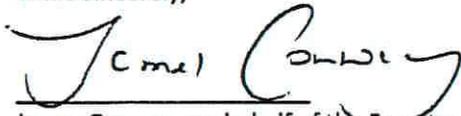
- o An Environmental Impact Assessment (EIA) is mandatory for initial afforestation which would involve an area of 50 hectares or more. The licence under appeal concerns 8.87 hectares. Sub-threshold EIA conditions are set out at schedule 3 of the Forestry Regulations, 2017 (SI No 191 of 2017) and this proposed afforestation is sub-threshold for the purposes of EIA. Having regard to the nature, scale, location and design of the proposed afforestation, the nature and extent of existing forestry in the area and to the characteristics of the surrounding environment, which is rural and agricultural in nature and with a sparse and dispersed settlement pattern, the FAC concluded that the proposed afforestation either by itself, or in combination with other projects and land uses in the area, would not give rise to any real likelihood of significant effects on the environment and that the submission of an environmental impact assessment report of the proposal is not required. The FAC are satisfied that the requirements of the EIA Directive (Directive 2011/92/EU as amended by Directive 2014/52/EU) have been met.
- o From the evidence available to the FAC, the project site is moderately sloped and described as mineral soil. There are no EPA identified watercourses on the site. Lough Oughter and Associated Loughs SAC is at a distance of 10.0 km with no hydrological connectivity and Lough Oughter Complex SPA is at 12.1 km and is a wetland habitat for listed birds – the site subject to assessment is not a wetland site and is enclosed agricultural land. The FAC is satisfied that no possibility of a significant effect on a European Site arises when considered against the works licenced and the interests of those SAC and SPA sites, in addition the site at appeal is unsuited to the qualifying interest bird species of the SPA, many of which are waterfowl, set out for above for reason of the distance from the SPA. Also, there is no possible effect from this site on the interests of the closest SACs based on distance and proposed works. The FAC concludes that this project on its own can have no possible effect on the European sites set out for.

In addition, the FAC has considered all likely sources of effects arising from the project together with other sources of effects in the existing environment and any other effects likely to arise from proposed or permitted plans or projects. Based on the evidence, while the project is adjacent to another afforestation project, the distance from any European site and the lack of hydrological connectivity from a European site its determined that no possible effect arises. The FAC are therefore satisfied from the evidence then that the project CN80620 on its own or in-combination with other plans or projects will not give rise to any possible impact on a European site and an appropriate assessment is not required.

- o The requirements of the *Forestry Standards Manual* in relation to fire risk have been followed by the Inspector. There is no high-risk bogland connected to the site. The prescribed setback requirements have been met.
- o The encroachment of deer onto roads and agricultural land is a national issue in relation to which the FAC has no function. The FAC has no role regards TB requirements.
- o Landowners have the right to afforest their lands, once doing so within the law.
- o The FAC concluded that the proposal is consistent with Government policy and good forestry practice and would not be detrimental to the amenities of the area.

- o 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 and submissions and observations received, including information provided at the Oral Hearing.

Yours sincerely,

A handwritten signature in black ink that reads "James Conway". The signature is written in a cursive style with a large, sweeping "C" at the end.

James Conway, on behalf of the Forestry Appeals Committee