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24 August 2021

Subject: Appeal FAC 692/2020 regarding licence CN84872

Dear Mr [REDACTED]

I refer to your 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 14A (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 CN84872 for afforestation of 5.42ha, in Barnagorteeny, Co Galway was approved by the Department of Agriculture, Food and the Marine (DAFM) on 19 August 2020.

Hearing

An oral hearing of appeal FAC 692/2020 of which all parties were notified, was held by a division of the FAC on 24 June 2021.

In attendance

FAC Members: Mr Des Johnson (Chair), Mr Derek Daly, Mr Luke Sweetman and Mr Dan Molloy
Secretary to the FAC: Mr Michael Ryan
Appellants: [REDACTED]
Applicant: [REDACTED]
DAFM Representatives: Ms Eilish Kehoe, Mr Donal Keegan and Mr Alan Booth

Decision

The Forestry Appeals Committee (FAC) considered all of the documentation on the file, including application details, processing of the application by DAFM, the grounds of appeal, submissions made at the Oral Hearing and all other submissions, before deciding to affirm the decision to grant this licence (Reference CN 84872).

The proposal is for the afforestation (Native Woodland Scheme) of a stated site area of 5.42ha at Bartnagorteeny, Co. Galway. The proposal includes 870m of Stock Proof fencing. The site is in 2 Plots. Plot 1 – (4.91ha) is to be planted with 60% Common Alder, 15% Pedunculate Oak, 15% Downy Birch

and 10% Additional Broadleaves. Plot 2 – is to remain unplanted. The project lands are crossed by/adjoin an aquatic zone. Ground preparation would include woody weed removal, and mounding. No mounding is proposed within 30m of an aquatic zone. No fertiliser or drainage is proposed. The site is bordered on the northern boundary by Barnagorteeny Stream and along part of the southern boundary by the Newport River.

The Inspector's certification states that the soil type is mineral, and the lands are exposed at 80-100m elevation. It is in an area sensitive to fisheries but not within a Freshwater Pearl Mussel catchment. It is free of shell marl or highly calcareous soils but designated as potentially acid sensitive. It is not prone to flooding and is not in a Prime Scenic Area as per the County Development Plan. Adequate access is available. The site is enclosed and is heavy rush ground with one internal watercourse and an edge stream. The stream flows to Lough Corrib SAC and SPA. The approximate percentage forest cover at present in the townland is 0.68%, the approximate percentage forest cover at present within 5km is 14.88%, and the approximate percentage forest cover in the underlining waterbody is 10.1%. The amount and type of forest cover in this locality is known to be a significant issue. There would be no impact on any Way-Marked Way, no impact on a densely populated area and no impact on an area commonly used by the public for recreation (a number of the statements in this certification were clarified or corrected at the Oral Hearing).

The DAFM referred the application to Galway County Council, the Western Regional Fisheries Board (WRFB), National Parks and Wildlife Service (NPWS), and An Taisce. No submissions are recorded from the County Council, the WRFB and the NPWS. The response from An Taisce states that the main concerns relate to failure to recognise the proximity to Lough Corrib SPA and SAC, and the fact that the Freshwater Pearl Mussel was not considered. Screening for Appropriate Assessment is required. Lough Corrib SPA is an internationally important site with, in excess of 20,000 wintering waterbirds and a nationally important communal roost for the Hen Harrier (Annex I species). Access to large areas of open ground is crucial for the Hen Harrier. Afforestation can have a low level of prey species and increased risk of nest predation. There would be a potential adverse effect on the Hen Harrier. Appropriate Assessment should take into account the composition of the surrounding area with regard to the presence and age profile of nearby forest plantations and the presence of wind farms. The Owenriff catchment is one of the priority catchments for the Freshwater Pearl Mussel, where the species is widespread. Its status is threatened, and it is in dramatic decline. It is an Annex II and Annex V species (Habitats Directive) and is also protected under the Wildlife Acts. Forestry has the potential to impact on FWPM. It is a qualifying interest of the Lough Corrib SAC. There may also be unintended consequences for Salmon. Water setbacks are needed to protect water quality and aquatic ecosystems from possible sediment and nutrient run-off. The area for setback should be clarified.

An Appropriate Assessment Report (AAR) was completed by MKO on behalf of the DAFM, dated 16.06.2020. The report carried out Appropriate Assessment Screening on Natura 2000 sites within a 15km radius of the project lands. Eleven sites were screened out for Stage 2 Appropriate Assessment with reasons given - Connemara Bog Complex SAC, Maumturk Mountains SAC, Ballynaglancy Cave, Cong SAC, Lough Carra/Mask Complex SAC, Gortnandarragh Limestone Pavement SAC, Ross Lake and Woods SAC, Cloughmoyne SAC, Kildun Souterrain SAC, Kilkieran Bay and Islands SAC, Connemara Bog Complex SPA and Lough Mask SPA. Two sites are screened in for Stage 2 Appropriate Assessment – Lough Corrib SAC and Lough Corrib SPA. The qualifying interests and conservation objectives are listed

and there is an examination of potential for adverse impacts arising from the proposed development. Mitigation measures are recommended in relation to water protection measures, Otter disturbance mitigation measures, and Hen Harrier measures. An in-combination report lists non-forestry projects as dwellings, and forestry related projects (since 2016) as afforestation (6), Private felling (4), and Coillte felling (2).

An Appropriate Assessment Determination (AAD) was completed by a DAFM ecologist on 17.07.2020. This adopts the AAR, with a number of specified exceptions. The same eleven Natura 2000 sites are screened out for Stage 2 Appropriate Assessment for reasons including absence of hydrological connectivity, separation distances, the project lands being outside the core foraging range for the Lesser Horseshow Bat (2.5km), and the terrestrial nature of habitats/species as qualifying interests for the designated sites. Screened in for Stage 2 Appropriate Assessment are Lough Corrib SAC and Lough Corrib SPA with reasons given. The SAC partially adjoins the proposed afforestation site along the north-eastern boundary and hydrological connectivity exists. There is a potential pathway for effect in the form of the deterioration in water quality as a result of sedimentation, and hydrocarbon pollution. The site is considered within the Zone of Impact, and there is potential disturbance of the Otter. In the case of the SPA, the Natura site is located 1.5km to the east, and hydrological connection exists. There is a potential pathway for effect in the form of the deterioration in water quality as a result of sedimentation, and hydrocarbon pollution. The site is considered within the Zone of Impact. A Stage 2 Appropriate Assessment is carried out for both sites and mitigation measures recommended for inclusion as conditions of the licence, if granted. The AAD lists issues where the determination differs from the AAR, including:

- The site is a combination of mineral and peat soils, so setbacks should vary accordingly
- Silt fences are not required for afforestation
- No mounding within 30m of an aquatic zone. 5 rows of native broadleaves to be pit planted outside the aquatic setback
- The site is not contained within Lough Corrib SPA.

The AAD concludes that the proposed development individually or in combination with other plans or projects will not adversely affect the integrity of any listed European site, having regard to their conservation objectives, if carried out in accordance with the Environmental Requirements for Afforestation (DAFM 2016), the Forestry Standards Manual (DAFM 2015) and site-specific mitigations:

- Water setback a minimum of 20m adjoining the aquatic zone in Plot 1 where the soil is peat
- Water setback a minimum of 10m adjoining the aquatic zone in Plot 1 where the soil is mineral
- No mounding within 30m of an aquatic zone as per the Biomap
- 5 rows of native broadleaves outside the aquatic setbacks in Plot 1
- Water setback a minimum of 5m adjoining relevant watercourses in Plot 1
- No woody weed removal within 50m of an aquatic zone or 20m from relevant watercourses
- Retain existing hedgerows.

The approval was issued on 19.08.2020. It is subject to standard conditions and other specific conditions requiring adherence to all conditions as per the AAD, adherence to forestry and water quality guidelines, and all guidelines to apply.

There is a single appeal against the decision to grant the licence. The appellant is the owner of a B & B adjacent to the project site. In summary, the grounds of appeal contend that the site is in close proximity to Lough Corrib SAC (part of the site is within the SAC) and Lough Corrib SPA. The Owenriff River runs along the boundary of the site and flows into Lough Corrib. Lough Corrib is an internationally important site and the main threat to its quality is from water polluting activities. Lough Corrib has a wide range of qualifying interests (listed). The AAD identifies that there is hydrological connectivity between Lough Corrib SAC and the site, and the site is considered to be within the Likely Zone of Impact. There is also a hydrological connection to Lough Corrib SPA with a potential pathway for effect identified in the form of the deterioration in water quality as a result of sedimentation and hydrocarbon pollution. This site is also within the Zone of Impact. The proposed development would have a severe negative impact on the appellant's business and livelihood and would encroach on the amenities of the appellant's property. The mitigation measures proposed in the AAD do not sufficiently address the potential pathway for effect. The DAFM have not shown that the proposed development will not adversely affect the integrity of the SAC or SPA having regard to their conservation objectives. Available scientific information suggests that the proposed development is likely to adversely affect the integrity of the SAC and SPA. The AAD has not sufficiently considered possible effects on local watercourses and, in particular, the Freshwater Pearl Mussel. The appellant requested sight of the documentation considered during the AAD but has not received the same. The appellant requests to be able to make a further submission upon receipt of the documentation. The consultation process was not fair or accessible given the lack of information provided.

In response the DAFM ecologist states, in summary, that the proposal is for Native Woodland Establishment. The central part of the site is a raised wet mineral hill on an east-west axis sloping down to the north and south to flatter, reclaimed and highly modified peat derived soils. The 1st order Newvillage stream intersects the south of the site, while the 3rd order Ballynagorteeny stream is adjacent to the north of the site and connects to Lough Corrib SAC in the north-east corner of the application site. There is some fluvial indicative flooding along the banks of the Ballynagorteeny stream. The AAR was produced by MKO on behalf of the DAFM. This was reviewed leading on to the AAD. The AAD considered all information on the file and available on iFORIS, responses from referral bodies and 3rd party submissions. The Freshwater Pearl Mussel population is in a separate catchment. There are recommended conditions in the AAD relating to the protection of water quality. Many of the qualifying interests in the Lough Corrib SPA are waterbirds and would not use the habitat on the project lands. Aquatic setbacks will prevent deterioration in water quality. The site is sub-optimal for the Greenland White Fronted Goose (GWFG). GWFG tend to select grassland areas more than over mire areas and, within grasslands, are strongly associated with less improved and wetter areas. The site is located close to a roadway and existing dwellings which could give rise to disturbance. Given the scale of the proposal, the loss of habitat within the project lands would not have a significant effect on the status of the species. The site is within the foraging range for Hen Harrier but does not provide suitable breeding habitat for the species and does not overlap with a Red Zone. It is sub-optimal for prey species. The loss of habitats on the proposed site would not have a significant effect on the status of the Hen Harrier. The mitigation measures in the AAD will ensure that there are no adverse effects on the integrity of European sites and their qualifying interests, and that there is no deterioration in water quality.

An Oral Hearing was convened on 24 June 2021. The FAC sat remotely. The applicant, DAFM and appellant (represented by his Solicitor) participated remotely. The DAFM detailed the procedures followed leading to the decision to grant the licence. The application was referred to An Taisce, the WRFB, the NPWS, and Galway County Council. An Taisce responded, but no other submissions were received. An AAR was prepared by MKO consultants on behalf of the DAFM, and an AAD had been prepared by a DAFM Ecologist. The application was both desk and field assessed. The proposal is for a Native Woodland Scheme on mineral soils. A high knoll on the site would not be planted. This is a Prime Scenic Area as per the statutory County Development Plan. The site is not within a Freshwater Pearl Mussel catchment, but, in any case, there would be no deterioration in water quality. The area is acid sensitive, but the proposal is for broadleaves. The site adjoins Lough Corrib SAC and is proximate to Lough Corrib SPA. The percentage forest cover within 5kms of the site is recorded as 16.5%. The amount of forest cover is an issue in this area, but concerns relate mostly to coniferous forestry. The type of forestry being proposed can be considered as an environmental protection measure. The Ecologist considered the project lands as sub-optimal for the Hen Harrier. No chemicals would be applied and there would be no increase in sedimentation and flooding would not be an issue. The lands are not suited to the GWFG and none have been recorded. The key views for adjacent residential property are towards Lough Corrib and not across the project lands. The appellant's Solicitor (AS) stated that her client ran a Bed & Breakfast and had views across the proposed site as well as the lake. The landscape rises towards the appellant's property. The B & B breakfast room had important views across potato beds on the project lands. If the development was to go ahead, the appellant would seek an area to the north-east of the site to be left unplanted. The AS stated that the applicant owned other lands leading to the lakeside and was concerned that trees already planted here would block views in the future. His property could end up surrounded by forestry. There is potential for deterioration in water quality as there is an internal stream and another on the site boundary. The AS questioned if it could be objectively concluded that no reasonable scientific doubt remained in terms of impact on the environment. Atlantic Salmon were very sensitive to any acidification. The AS questioned if there was scientific evidence to support the Appropriate Assessment conclusions. The appellant was concerned for the value of his property. In response to the FAC, the AS accepted that the AAR and AAD had been prepared with ecological input. It was also accepted that compliance with the terms of the licence would be a function of the Minister but questioned if this would be adequate given the sensitivity of the site. The applicant stated that the application met all of the requirements and everything had been carefully assessed. The proposal is for Native Woodland to the west of the appellant's property and would have no effect on his views. There would be no planting to the property boundary and residential setbacks would be provided. The DAFM stated that Plot 223 would be left unplanted, there would be a mandatory 20m setback from the boundary stream and 5m setback from internal watercourses. There would be no adverse impacts on the views from the appellants property towards Lough Corrib. The applicant stated that there was adequate access available to carry out the proposed development and that the proposal was not for a commercial plantation. The AS re-stated that the views to the northwest from her client's property were very important.

The FAC considered that the key issues arising in this appeal relate to the following:

- Potential for impact on the amenities of property in the vicinity
- Potential for impact on Natura 2000 sites – Lough Corrib SAC and SPA

- Water quality
- Freshwater Pearl Mussel
- Fair procedures

The proposal is for a Native Woodland Scheme on a stated site area of 5.42ha. The project lands consist of 2 plots, with the larger plot of 4.91ha planted with 60% Common Alder, 15% Pedunculate Oak, 15%Downy Birch and 10% additional Broadleaves. The second plot is to remain unplanted. The project lands appear to be to the west of a couple of existing properties, including the appellant's B & B. The plot to remain unplanted is adjacent to the west of these properties. Lough Corrib is to the north of the project lands and the adjacent properties. While there is no legal right to a private view, the FAC concluded that the proposed development, including the unplanted plot and the setbacks required to the watercourse along the northern boundary of the project lands, would have minimal impact on views northwards towards Lough Corrib. Other than minor, temporary disturbance during the planting of the woodland, the FAC concluded that there would be no significant impact on the amenities of the appellant's property, or on any other property in the vicinity. The appellant is concerned for the value of his property if the proposed development is carried out, but there is no convincing evidence to support this concern. The FAC concluded that no significant or serious error had been made in the making of the decision to grant the licence for reason that there would be an adverse impact on the amenities of property in the vicinity.

The FAC considered the procedures followed in respect of the provisions of the EIA and Habitats Directives. Initial afforestation, with resulting change in land use, is a class of development to which the EIA Directive and transposing Regulations apply. The threshold for mandatory EIA is 50ha. The proposed development on a site of 5.42ha is significantly sub-threshold for mandatory EIA. The FAC noted the information available to the DAFM in respect of the description of the proposed development, the location, and the nature and characteristics of potential impacts arising, and considered that this was adequate for the purposes of the EIA screening carried out by DAFM. The FAC agreed with the DAFM conclusion that EIA is not required in this case. In terms of the provisions of Article 6(3) of the Habitats Directive, the FAC examined the procedures followed by the DAFM. Screening for Appropriate Assessment was carried out on Natura 2000 sites within a 15km radius. Eleven sites were screened out for Stage 2 Appropriate Assessment with reasons given, and two sites were screened in for Appropriate Assessment – Lough Corrib SAC and Lough Corrib SPA. The qualifying interests and conservation objectives were listed and an examination of the potential for adverse impacts carried out. Mitigation measures relating to water protection measures, Otter disturbance, and Hen Harrier measures were recommended. An in-combination report lists non-forestry projects as dwellings, and forestry related projects (since 2016) as afforestation (6), Private felling (4), and Coillte felling (2). Following on from the AAR, an AAD was completed by a DAFM Ecologist. This adopted the AAR with a number of specified exceptions. Mitigation measures are recommended, and these are included as conditions on the licence granted. The appellant contends that the mitigation measures proposed in the AAD do not sufficiently address the potential pathway for effect, and that it has not been shown that the proposed development will not adversely affect the integrity of the SAC or SPA having regard to their conservation objectives. Based on the information before it, the FAC considers that the procedures followed in the AAR and AAD are consistent with the requirements of Article 6(3) of the Habitats Directive, and finds no reason to consider that the overall conclusion, that the proposed development individually or in combination with other plans or projects will not

adversely affect the integrity of Lough Corrib SAC or Lough Corrib SPA, having regard to their conservation objectives, if carried out in accordance with the Environmental Requirements for Afforestation (DAFM 2016), the Forestry Standards Manual (DAFM 2015) and site-specific mitigations recommended, is incorrect. On this issue, the FAC concluded that there was no significant or serious error in the making of the decision to grant the licence.

The FAC noted that, while it is stated that this is an acid sensitive area, the proposal is for broadleaves only, and no chemicals are to be used. Water quality would be protected by required setbacks from the aquatic zone in Plot 1 and also the relevant watercourse in the same plot. These setbacks are conditions of the licence granted. In these circumstances, the FAC found no reason to conclude that there was any significant or serious error in the making of the decision to grant the licence in respect of this issue.

Addressing the specific issue raised by the appellant in regard to the Freshwater Pearl Mussel, the FAC concluded that the species is in a separate catchment to the project lands, that there would be no deterioration in water quality arising from the proposed development and that the proposed native woodland development would not have any impact on the Freshwater Pearl Mussel.

In the written grounds of appeal, the appellant stated that he requested sight of the documentation considered during the AAD but has not received the same. The appellant requested that he be able to make a further submission upon receipt of the documentation. Noting that the appellant had submitted detailed written grounds of appeal and had also participated in the Oral Hearing of the appeal, the FAC found no basis to conclude that the appellant has not been afforded fair procedures.

The FAC concluded that there was no significant or serious error in the making of the decision to grant the licence, and that the decision was made in accordance with fair procedures. In deciding to affirm the decision of the Minister, the FAC concluded that the proposed development would be consistent with Government Policy and Good Forestry Practice.

Yours sincerely

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Des Johnson on behalf of the Forestry Appeals Committee

