



[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

25 August 2021

Subject: Appeal FAC 052/2021 regarding licence CN85227

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 CN85227 for afforestation of 9.82ha, in Tooromin, Rathslevin, Listrisnan, Co Mayo was approved by the Department of Agriculture, Food and the Marine (DAFM) on 15 February 2021.

Hearing

A hearing of appeal FAC 052/2021 of which all parties were notified, was held by a division of the FAC on 13 July 2021.

Presiding

FAC Members: Mr Des Johnson, Mr Luke Sweetman and Mr Seamus Neely

Decision

The Forestry Appeals Committee (FAC) considered all of the documentation on the file, including application details, processing of the application by DAFM and the grounds of appeal and all other submissions, before deciding to affirm the decision to approve the licence (Reference CN 85227).

The proposal is for afforestation on a stated site area of 9.82ha. and 1944m of fencing at Listrisnan, Rathslevin and Tooromin, Co. Mayo. (the Site Notice states 10.29ha). Species proposed are 85% Sitka spruce and 15% Broadleaves. The project lands are in 9 plots, with 6 to be planted and 3 left unplanted. The DAFM referred the application to Mayo County Council, the National Parks and Wildlife Service (NPWS), and the North Western Regional Fisheries Board (NWRFB). There is no record of any response from the County Council or the NPWS. A response from Inland Fisheries Ireland (IFI) states that the lands are adjacent to a tributary of the Pollagh River which provides important salmon and trout spawning and nursery habitat for the River Moy system. The Pollagh River forms part of the River Moy SAC which is designated for the protection of Atlantic Salmon, White-clawed Crayfish and Lamprey

species. The catchment has 'Good' ecological status. Conditions are recommended if the licence is to be granted:

- Aquatic buffer zone of a minimum width 10m must be established along the adjacent watercourses, with the additional planting of 2 rows of suitable native trees outside this
- Soil test to determine if the site is suitable for the production of a mature crop without excessive additional fertiliser
- Favour the planting of native tree species
- Ground works should not be carried out when soils are saturated or during wet weather conditions
- Forestry machinery must not travel through drains/streams.

A DAFM Archaeologist's Report, dated 14.02.2019 recommends archaeological conditions if the licence is to be granted. An illustrated map is attached.

The Inspector's Certification states that the proposed development was field, and desk assessed. The area is not acid sensitive or sensitive to fisheries. The site is within a NHA, pNHA, SAC, SPA or National Park. This is not a Prime Scenic Area as per the County Development Plan, but the site is in a high amenity landscape. There would be no impact on any Way-Marked Way. Ground preparation would include woody weed removal, and mounding, and slit planting is proposed. There would be herbicide control in years 0-3, and 250kg per hectare of Ground Rock Phosphate would be applied. No drainage is required, and road access is provided. Soils are predominantly Podzols (mainly Gley soils), and the slope is predominantly flat to moderate. The approximate percentage forest cover in the townland – 23.84%, within 5km is 9.83%, and in the underlying waterbody is 0.64%. Seven submissions were received and considered. Appropriate Assessment screening was carried out by the Inspector, but this is superseded by a later screening.

Appropriate Assessment screening was carried out in respect of Natura 2000 sites within a 15km radius. Balla Turlough SAC was screened out for Stage 2 Appropriate Assessment for reason that the qualifying interest is a Turlough, and the project site is in a separate Water Framework Directive (WFD) catchment, and there are no karst features on the project lands. Ballinfad SAC is screened out for reason that the qualifying interest is the Lesser Horseshoe Bat, and the project lands are beyond the foraging range for this species. Lough Conn & Lough Cullin SPA was screened out for reason that the site is outside the foraging range of the qualifying interests (Greenland White-fronted Goose, Tufted Duck, Common Scoter, Common Gull and Wetlands), there is no surface water connectivity, and the site is within a separate WFD catchment. Screened in for Stage 2 Appropriate Assessment is the River Moy SAC. The reason given is that the qualifying interests are peatland habitat, alkaline fens, old sessile oak woods, lampreys, salmon, white-clawed crayfish, and Otter. The project area is c.2.4km upstream and contains 2nd and 3rd Order streams that flow into the SAC. Particular concerns relate to water quality and ex-situ disturbance of the Otter.

A Natura Impact Statement is submitted, prepared by Saoirse O'Donoghue, Consultant Ecologist. This states that the site comprises semi-improved agricultural grasslands on a flat to gentle slope with moderate exposure. There is hydrological connection to the River Moy less than 2km to the north-east. The project lands are prone to flood between 20 -70m from the stream banks. The

Gweestion_010 watercourse flows east along the project area boundary towards the Gweestion River and the River Moy SAC and has 'Good' WFD status. The Gweestion is a salmonid river. A Stage 2 Appropriate Assessment is carried out for the River Moy SAC. Qualifying interests and conservation objectives are listed and there is an examination of the potential for adverse impacts arising. Mitigation measures are recommended relating to silt and sediment control, the loss of chemicals/hydrocarbons to the environment, biosecurity measures, and post-operation works, including Otter mitigation.

A DAFM 'In-Combination' report is dated 17.01.2020. This states that the project is in the River Sub-basin Gweestion_010 and Pollagh_040. Non forestry projects listed include dwelling, agricultural shed, forestry access road, and domestic extensions. Forestry related projects are afforestation (9), forest roads (1), and Coillte felling (6). The River Sub-basins Gweestion_010 and Pollagh_040 have 10% and 5% forest cover respectively.

An Appropriate Assessment Determination (AAD) was prepared by a DAFM Ecologist dated 21.01.2021. The AAD agrees with the conclusions of the Appropriate Assessment screening, and the applicant was required to submit an NIS, including an Appropriate Assessment Stage 2 assessment for the River Moy SAC. The AAD considers the NIS submitted, but differs from the recommendations of the NIS on several specified issues, including:

- No silt traps should be added as, given the current vegetated state of existing relevant watercourses, additional silt traps would give rise to additional siltation
- Lack of clarity on water features and their setbacks
- The Ops/Bio Maps are not clear which setbacks relate to which plots
- The Ops/Bio map indicates a setback of 20m where there are peat soils. iForis shows peat soils in part on Plot 1
- Revised Bio maps were submitted, but a revised certified Species Map was not submitted to reflect changes
- Given the connectivity to the River Moy SAC and concerns in relation to water quality, there should be no clearing of any existing drains/relevant watercourses (RWCs) within the project area

It is determined that, based on the best scientific knowledge in the field, 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, provided mitigations are implemented. The mitigations, in summary, are:

- Aquatic zone setbacks of 15m (minimum) in areas of mineral soils and 20m (minimum) in areas of peat soils
- RWC setbacks of 5m (minimum) in all plots
- No machinery within water setbacks
- No planting within water setbacks
- Plot 6 to be retained as a Bio plot
- 5 lines of native (alluvial woodland) broadleaf species to be planted adjoining water setbacks for aquatic zones

- 3 lines of native broadleaf species to be pit planted adjoining setbacks for RWCs
- No silt traps in RWCs
- No cleaning of RWCs
- No mound drains to connect with existing RWCs that connect directly or indirectly to an aquatic zone
- Retain existing hedgerows, scrub and veteran trees
- Good hygiene and biosecurity controls to be employed
- No chemicals to be used within setbacks, Plot 6, broadleaf ADB or alluvial woodland areas or within 20m of any aquatic zone
- Specification for fertiliser and pesticide application
- Cessation of operations during and after periods of heavy rainfall
- Operations to be monitored by an Ecologist and/or Registered Forester

The Minister issued the licence on 15.02.2021. It is subject to standard conditions, with additional conditions relating to the following:

- All mitigations in the AAD to be adhered to
- Increase in broadleaf planting to 10 rows (20m) outside 60m dwelling setbacks
- Plant the elevated area in plot 400 (4) (approximately 20m additionally) outside the Archaeological setback in plot 400 with broadleaf species.
- Plant the remaining area south of the hedgerow in Plot 473 (9) with broadleaf species
- Dwelling house setback of 60m
- Adhere to Environmental requirements for afforestation
- Archaeological exclusion zone/setback 20m in radius for the outer extent of the Recorded Monument (ringfort MA 071-092). No deep drains within 30m. Fencing and access.
- 10m unplanted buffer zone/setback around any historic buildings and 5m unplanted buffer around the attached infields and access lanes.

There is a single appeal against the decision to grant the licence. In summary, the grounds of appeal are as follows:

- The proposed development is to the front and side elevations of the appellant's house. It is on part elevated ground and would block views of the Bohola-Kiltimagh Road, and the Listrisnane-Bohola Road
- The proposed development would block nice country views. This is good quality land, where silage is cut yearly, and cattle graze late on in the year
- The proposed trees can grow to 40-50 feet in height and will have an adverse effect on the appellant's house and the surrounding countryside, and on the appellants wellbeing
- There would be an adverse effect on the value of the appellant's house
- The applicant did not consult with the appellant despite being neighbours all their lives

It is noted that the Notice of Appeal form, in mistake, ticks a box stating that the appellant is the applicant.

In response, the DAFM stated that submissions received were considered prior to the grant of approval. Additional measures, on top of standard landscape measures, will allow for the successful

integration of the project, which is predominantly low lying. Adjoining the dwelling and lands to the west of Plot 1 (350), the required setback of 60m, plus the additional broadleaf planting of 20m, plus the existing hedgerow network in the vicinity will minimise impact on views from the dwelling. No assessment was made of any impact on the value of adjoining houses and lands.

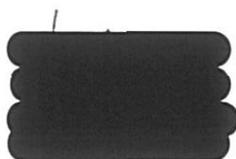
A Hearing of the appeal took place on 13 July 2021. The FAC noted that the application lands comprise 9 plots, two of which are to be Bio plots (plots 1 and 8) and another one (Plot 3) would be left unplanted. It further noted that the licence approved by the DAFM included a condition that Plot 6 (421) was to be retained as a Bio plot. Plot 3 (381) is a linear plot adjoining the public road, the opposite side of which there are three residential properties. Plot 1 (350), located to the south-east of a dwelling, is also to be retained as a Bio plot. The terms of the licence also require a 60m setback to houses, and an increase in the broadleaf planting to ten rows (20m) outside the 60m setbacks. The FAC considered that these requirements of the licence would contribute significantly to the protection of the amenities of existing residential property in the vicinity of the project lands. In particular, the FAC concluded that the impact on local private views would not be such as would warrant refusal of the licence, as approved.

The appeal grounds contend that the approved development would have an adverse effect on the value of his house, but there is no convincing supporting evidence submitted in relation to this contention. Based on the information before it, the FAC finds no reason to conclude that there was any significant or serious error in the making of the decision to grant the licence for reason of effect on property values in the area.

The FAC considered the information submitted and available in respect of the description of the project, the location, and the type and characteristics on potential impacts arising from the proposed development. The FAC found no reason to determine that the screening conclusion that EIA is not required is incorrect, or that the screening and AAD were not consistent with the requirements of the Habitats Directive.

In deciding to affirm the decision of the Minister to grant licence CN 85227, the FAC concluded that the proposed development would be consistent with Government policy and Good Forestry practice.

Yours sincerely

A redacted signature consisting of three thick, black horizontal bars.

Des Johnson on behalf of the Forestry Appeals Committee

