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16th February 2021

Subject: Appeal FAC 458/2019 regarding licence CN84957

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 CN84957 for afforestation of 4.52 ha at Leamanish, Co. Leitrim was approved by the Department of Agriculture, Food and the Marine (DAFM) on 26th November 2019.

Hearing

An oral hearing of appeal FAC 458/2019, of which all parties were notified, was held by a division of the FAC on 1st February 2021.

In attendance:

FAC Members: Mr. Myles Mac Donncadha (Chairperson), Mr. James Conway, Mr. Seamus Neely.

Secretary to the FAC: Ms. Emma Guerin.

Appellant: [REDACTED]

Applicant: [REDACTED]

DAFM Representatives: Mr. Seppi Hona, and 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 regarding licence CN84957 back to the Minister.

The licence decision pertains to afforestation of 4.52 ha at Leamanish, Co. Leitrim. The land is described in the Appropriate Assessment screening form as having vegetation type comprising grass / rush site, the slope is described as predominantly moderate (<15%) with the underlying soil type being predominantly podzolic. The project area is described as being crossed by / adjoining an aquatic zone. The proposed species are Sitka Spruce (85%) and Broadleaf (15%). The project was not referred to any referral body in this case. The DAFM confirmed that the application was subject to both a field and desk assessment. 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 require an EIA. The approval was issued on 26th November 2019 with a number of conditions attached, including those relating to compliance with Operational Proposals and Specifications that were enclosed with the licence, compliance with Departmental guidelines and requirements for Landscape, Water Quality, Harvesting, Biodiversity and Archaeology, and additional Environmental and Silvicultural Conditions.

An appeal was lodged against the decision (FAC 458/2019) which submitted grounds including; that the information provided by the Forest Inspector and approved by the Forest Service is misleading and incorrect, that Save Leitrim have grave concerns in relation to the negative impact the cumulative effect afforestation is having on the social fabric of Leitrim, that Save Leitrim sees this project as the continued destruction of landscape, communities, cultural and environmental heritage, and the economic viability of small holdings, that Save Leitrim have grave concerns in relation to the negative impact that this application will have on biodiversity and the negative impacts of cumulative effect on Water Quality and the ecology of water bodies and habitat loss, that it has concerns regarding the Appropriate Assessment submitting that the project lands are foraging grounds for protected species of bat and that the hen harrier should be protected, submits a conflict with the (County's) Strategic Environmental Assessment and their water programme, and has concerns in relation to hydrological connectivity.

In a statement provided to the FAC, the DAFM submitted that the decision was issued in accordance with procedures SI 191/2017 and the 2014 Forestry Act. The statement provided a response to the appeal confirming that it was desk and field assessed, that it was a site with rush / grass and heavy poaching due to wet soil conditions, and that the AA process relevant at the time was adhered to. It stated that the Cuilagh-Anierin Uplands SAC is the only Natura site within 15km of the proposal and that as part of the AA screening process an in-combination assessment was carried out to assess forest and non-forest plans / projects in the area and that the site was screened out for Appropriate Assessment. At the Oral Hearing the DAFM Representatives submitted that the application was processed following procedures and that the applicant had submitted information, including maps, which were considered in processing the application. They provided an overview of the processing including the undertaking of an Appropriate Assessment screening, and an in-combination assessment regarding the project.


At the oral hearing, the appellant contextualised the submitted grounds of appeal and made more specific reference to some of the grounds. The appellant submitted that the bio-map accompanying the application doesn't clearly show hedgerows and watercourses as required, that the project is in a waterbody area with an unassigned status, and queried the percentage of existing forest cover as contained in the DAFM certifications on file. In response the DAFM representative confirmed having carried out a site inspection on 29th October 2019, including walking the site and boundaries and carrying out an AA screening which concluded that the site be screened out for the purposes of AA. The representative asserted that the absence of forestry cover in the Townland had been taken into account in making the assessments of the application citing the last spatial run / output in this connection from the DAFM IFORIS system as being on 21st November 2019.

The appellant further queried this aspect regarding forest cover in the area, in particular drawing attention to the *zero entry* for the percentage forestry cover in place in the townland at the time of assessment and submitted that there was forestry largely surrounding one of the plots and on two sides of a plot. He further submitted that there is a significant amount of forest cover in the townland and also referenced another application in close proximity to the project. The DAFM representative indicated that the *zero output* as included in the certification as to the percentage cover in the townland had arisen from an error in the IFORIS system at the time. There were also some differing views as to the adequacy of the mapping provided with the application to enable watercourses to be clearly identified. It was submitted by DAFM that the record of the EIA consideration did not include the percentage cover in the townland arising from a technical error.

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 there is no convincing evidence before the FAC that these applications are directly related, however, even if the two were related the combined area would be 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 discrepancy between the percentage forest cover recorded as being in place in the townland (ie none) in the screening record on file, which is relied on to determine the need for an EIA, is considered by the FAC to be an error in this case. While these missing data may have been in place at the time of the decision the error is regarded as significant due to the stated reliance by DAFM (at Oral Hearing) on these zero outputs as part of the assessment process; the submissions made by the appellants at Oral Hearing; and the evidence of the existence of forestry on aerial online imagery. While noting the submissions made by DAFM at the Oral Hearing, the FAC concluded that a new assessment to determine whether an EIA is required should be undertaken regarding this proposal.

In considering the appeal the FAC had regard to the record of the decision, the submitted grounds of appeal, and submissions received including at the oral hearing. The FAC is satisfied that a significant error or a series of errors was made in making the decision regarding CN84957 and is setting aside and remitting the decision back to the Minister to undertake 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,


Seamus Neely On Behalf of the Forestry Appeals Committee