



6/01/2021

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Our ref: 457/2019

Subject: Appeal in relation to afforestation licence CN84961

Dear [REDACTED]

I refer to the appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine (DAFM) in respect of licence CN84961. 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 CN84961 was granted by the Department on 25/11/2019. Standard conditions apply as well as a condition requiring Additional Broadleaf to consist of Pedunculate Oak and Rowan in equal measure and also all guidelines to apply.

Hearing

An oral hearing of appeal FAC 457/2019 was conducted by the FAC on 17/12/2020.

Attendees:

FAC: Mr Des Johnson (Chairperson), Mr Luke Sweetman, Ms Paula Lynch & Mr Pat Coman.

Secretary to the FAC: Mr Michael Ryan.

Appellant: [REDACTED]
[REDACTED]

Applicant representative: [REDACTED]

DAFM: Mr Seppi Hona and Ms Mary Coogan.

Decision

The FAC considered all of the documentation on the file, including application details, processing of the application by the 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 CN84961).

The licence pertains to afforestation on a stated site area of 22.37ha and 1,600 meters of fencing at Gorteenoran, near Cloone, Co. Leitrim. Proposed planting species include Sitka Spruce (85%) and

Additional Broadleaves (15%) consisting of Pedunculate Oak and Rowan in equal measure. Woody weed removal, mounding, slit planting, herbicide control at years 0,1,2 and 3 as well as manual weed control are proposed. Large trees and hedgerows are to be retained.

The proposal was field and desk inspected by the DAFM. The DAFM certification stated that the soil type is predominantly podzols in nature, the site is flat to moderate with a slope of <15%, that the project area is crossed by/adjoins an aquatic zone and that the vegetation type is comprised of grass/rush. It is stated that the site is not prone to flooding and is not acid-sensitive to fisheries. The site is stated to be exposed at an elevation of 54-69m. The project site lies in the catchment of the Upper Shannon, in the Cloone [LoughRinn]_SC_010 sub catchment area and in the River Sub Basin Relagh_010. It is further stated that there is 0% forest cover in the townland, 16.91% forest cover within 5 km of the project lands and 13.67% forest cover in the underlying waterbody. The DAFM undertook a screening in accordance with the provisions of the Habitats Directive. They did not find any Natura 2000 site within a 15km radius of the proposal and there was no reason to extend the radius in this case. It is not within any Natural Heritage Area (NHA), proposed Natural Heritage Area (pNHA) and is not in a Prime Scenic Area as per the County Development Plan. They did not find that it threatened the objectives under the Water Framework Directive River Basin Management Plan for the underlying waterbody/bodies. Referrals to external bodies did not arise. The overall conclusion was that the zone of influence centred on this application did not overlap with any Natura site and that due to spatial separation the project was screened out for the purpose of Appropriate Assessment (AA). It was further stated that an AA was not required because there was no possibility of a significant effect on any Natura site. The potential for the proposed project to contribute to an in-combination impact on European sites was also considered by the DAFM. Leitrim County Council planning website was consulted and 4 developments were found (moorings and dwellings). The An Bord Pleanála and the Environmental Protection Agency websites were consulted and did not show any projects in the townland. The Leitrim County Development Plan was also consulted. The iForis DAFM system was consulted and 7 afforestation projects, 7 Forest Road and 8 Felling Licences were identified at various stages of application /approval. The DAFM found the project to be in line with the Forestry Programme 2014-2020. The DAFM concluded that the project, individually or in-combination, does not represent a source or pathway for an adverse effect on any European site.

The licence was issued on 25/11/2019 subject to satisfactory completion of the work by 25/11/2022. The standard conditions apply as well as a condition requiring Additional Broadleaf to consist of Pedunculate Oak and Rowan in equal measure and also all guidelines to apply.

There is a single appeal against the decision to grant the licence. The grounds of appeal are set out in the Notice of Appeal Form and letter of appeal dated 17/12/2019. In the grounds of appeal Save Leitrim Group request that this licence be cancelled for the reasons set out in the extract below:

- *With over 30 000 hectares of conifer plantations in our county and no Environmental Impact Assessment ever undertaken, Save Leitrim have grave concerns in relation to the negative impact the cumulative effect afforestation is having on the Social fabric and the Environmental wellness of our county.*
- *Save Leitrim see this afforestation licence for a 22.37 hectare development as the continued destruction of our landscape, our communities, our Cultural and Environmental Heritage and*



the economic viability and sustainability of the traditional small holdings of County Leitrim, which defines us as a people.

- *There is considerable anger locally at the granting of this licence in this townland and this development alone funded by the Irish taxpayer will have a detrimental impact on the local community.*
- *Save Leitrim have grave concerns in relation to this application and the detrimental impact this large development will have on the biodiversity in this geographical area which is already saturated in monoculture plantations and the negative impacts the cumulative effect is having on water quality and the ecology of our water bodies and habitat loss.*
- *Save Leitrim believe that this application is in conflict with our Counties Strategic Environmental Assessment and their water quality programme and also the SEA's of our neighbouring Counties and all those that straddle the River Shannon until it reaches the sea at Limerick City.*
- *Save Leitrim have grave concerns for the Hydrological connectivity which is essential to the ecological integrity of the landscape and a reduction or enhancement of this property by this development could have major negative environmental effects.*

The DAFM statement of 17/2/2020 sets out their response. They advise that at application stage the observations submitted were considered in detail and reviewed as part of the approval process. The application was field and desk assessed by the Inspector and the appropriate assessment procedure relevant at the time was fully applied. In relation to forest cover in the townland, they refer to a small section of forestry planted in the adjoining townland of Drumboher which crosses into the townland of Gorteenoran (1.85ha of this plantation is in the townland of Gorteenoran) and point out that it is planted entirely with native tree species (planted under the Forest Environment Protection Scheme several years ago). In relation to the proposal, they stated that there is no Natura site within the 15km radius of the area and that the land was assessed and walked in detail. The vegetation was described as rush/grass with heavy poaching due to the wet nature of the soil and overstocking. It is also stated that all hedgerows must be maintained, that 15% will be planted with native hardwoods and that there will be open areas and setbacks amounting to 15% of the overall area.

The FAC convened an Oral Hearing on 17/12/2020. The DAFM described how the proposal was both desk and field inspected. The DAFM Forestry Inspector gave a summary of observations from the field inspection. He described as excellent the access to the site by way of a tarred and chipped road past a dwelling house. Throughout the area, the amount of hedgerows and the absence of animals was noted and the forester was of the opinion that the site was neglected. He observed a watercourse at the bottom running north to south. It was explained that there is no Natura site within the prescribed radius and the DAFM Forestry Inspector expressed the opinion that percentage of forest cover was very low and there was forest cover in the adjoining townland. The licence was issued with standard conditions plus an additional one specifying that additional

broadleaves comprising 15% of the planting should be Pedunculate Oak and Rowan. The site is also marked down for an inspection at first instalment stage (approx. 4 years later).

The Appellant contended that Leitrim is a heavily afforested County and that this townland with an area of approx. 41ha, would, after the planting under this licence, be 50% afforested. The point was made that conifer plantation is replacing the small farmer in Leitrim and destroying communities. Mention was made of local farmers being unable to buy land and the effect that foreign owned forestry companies are having on land prices and local farming. The average size of a farm in Leitrim is circa 25ha, so a plot of this size (22ha) represents a significant removal of land available for farming. The Appellant also contended that the laneway access was a right of way and needed to be registered. Reference was made to a National Parks & Wildlife Service (NPWS) survey citing the locality as High Nature Value and the Appellant contended there should have been a referral to the NPWS. The Appellant also referred to archaeological remains, contending that a referral to an archaeologist should also have taken place. The Bio Map was regarded as not being adequate. It was claimed that the area was within 6 or 7kms of the pNHAs of Lough Sallagh, Lough Rinn and Lough Errew and that the Cloone River flowed towards these lakes. As regards drains, the appellant contended that the area was peaty and needed drains which result in run off into the stream on site which is a tributary of the Cloone River flowing into the high priority area of Lough Rinn. It was also argued that hedgerow habitats would be lost due to close planting and lack of setbacks. The appellant referred to the County Development Plan (CDP) and the Strategic Environmental Assessment (SEA) commenting that forestry is a serious issue for the County. It was contended that a significant part of the county had been afforested yet no Environmental Impact Assessment (EIA) had been carried out and the cumulative impact of forestry on the fabric of small rural communities had not been assessed.

The Applicant's representative explained that there would be no run-off from drains into the stream on the eastern boundary of the site. The FAC made further enquiries about this and the Applicant's representative explained that drains will be set back from the stream, will stop 10m before the stream or sometimes even further and also that there would be an unplanted area between the broadleaves and the stream. Drains will be shallow, to create the mound of earth for planting. It was also explained that with 15% of the site in native hardwoods and 15% for hedgerows, setbacks/open space, that meant that 30% of the site will be something other than Sitka Spruce. The FAC queried the access to the site. The DAFM advised that the laneway was tarred and chipped and gave excellent access, sufficient for the technical approval. The Applicant's representative explained that the lane was used over the years for access to the residence on the south west corner, that it was a residential holding and that they would use the same access as had been used over the years. The FAC queried the soil type and vegetation. The DAFM explained how the soil was sampled during the field inspection using a soil stick and that it was a majority of surface water gleys with vegetation of wet grassland dominated by rushes. The DAFM further explained that the main hydrological aspect was the stream to the east but this was protected by a 10m setback and then a stand of broadleaf trees. With regard to hedgerows, the planting can only be done to within a couple of meters and in reality usually further away to the drip line of trees/hedge. The FAC enquired about the NHAs and pNHAs and DAFM confirmed that no Natura sites were found within 15km and standard requirements are used for NHAs and pNHAs as regards water quality. In addition, the FAC queried hydro connectivity and the DAFM advised that there were no hydrological issues and that they had researched pressures on water quality regarding Lough Rinn and noted that the key pressure is



agriculture. With regard to the quality of the Bio Map, the DAFM commented that it was well marked out with all the relevant features.

The FAC enquired about the CDP and any other statutory or official reports or plans about forestry concerns in Leitrim. The appellant mentioned that a new CDP was being designed but accepted that the current system used three levels of capacity indicator for forestry: High, Medium or Low. The FAC noted that according to the CDP the area is considered as high capacity for forestry and is not in a prime scenic area. The FAC also requested any data, studies or reports that could substantiate the comments about the impact on the county. The appellant mentioned that the Forestry Standards are there and that an EIA should have been undertaken, that every County Councillor has an issue with forestry and also referred to the UCD study (The Socio-Economic Impact of Forestry in County Leitrim 2019) but contended that this study had not addressed the local social and farming issues.

In addressing the issues raised in the written and oral submissions by the appellant, the FAC considered that a number of these related to policy matters. The FAC may have regard to such policy matters in determining appeals coming before it, but is not a policy making body in respect of forestry or competing land uses.

The FAC examined the procedures followed by the DAFM before concluding that EIA is not required in this case. The proposal for woodland on a site area of 22.37ha is sub-threshold for mandatory EIA under Irish Regulations which sets a threshold for such mandatory assessment at 50ha. The FAC is satisfied that the DAFM had adequate information before it in respect of the characteristics of the proposed development, the location and the type and characteristics of potential impacts arising from the proposed development, to enable a screening for EIA. In this regard, the FAC noted the detailed information submitted describing the proposed development, including planting methods, submitted information relating to the location, forestry coverage in the townland and in the underlying waterbody and the field inspection carried out in advance of the making of the decision. The FAC noted that the DAFM had considered other projects, including forestry related projects, in an in-combination assessment. Based on the information before it, the FAC considers that there is no convincing evidence before it to indicate that procedures followed by the DAFM in the screening were flawed or that the conclusion that an EIA is not required, is incorrect.

The appellant contended that referrals should have been made to the NPWS and to an archaeologist for observations. The DAFM contend that there is no mandatory referral requirement in this case nor were archaeological ruins present on the site. Having regard to the nature and scale of the proposed development, the characteristics of the receiving environment and the evidence from the DAFM field inspection, the FAC considered that there was no mandatory requirement for referrals in this case and that the DAFM had exercised the discretion open to it in this regard. The appellant raised concerns about the level and negative impact of afforestation on the county and the destruction of the landscape and contended that the application is in conflict with the County's SEA and water quality programme but under questioning at the Oral Hearing offered no convincing evidence to substantiate these concerns. The FAC notes also that according to the current CDP the area is considered as high capacity for forestry and also notes the level of afforestation is 16.91%

within 5 km of the project lands. As regards the issue of concerns about hydrological connectivity and proximity to NHAs and pNHAs, the FAC notes that although there are pNHAs in the wider area including Lough Sallagh, Lough Errew, Lough Rinn, there is no evidence of direct hydrological connection from the project lands and no obvious pathway for any adverse effects on these sites arising from the proposed development. With regard to the issue of loss of biodiversity, having regard to the nature of the proposal, which would convert existing agricultural land to woodland, including 15% native hardwoods and 15% setbacks with retention of all hedgerows and trees, the FAC concluded that there is likely to be a change in biodiversity over time but that this would not be a reasonable ground for setting aside the Minister's decision to grant the licence.

Having regard to the AA Screening conducted and having regard to the lack of pathway and the distances of separation, the FAC is satisfied with the conclusion that the proposal on its own or in combination with other plans and projects would not be likely to give rise to a significant effect on any European Site.

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

Yours Sincerely

A large, dark, rounded rectangular redaction box covering the signature of Paula Lynch.

Paula Lynch on behalf of the FAC