



An Coiste um
Achomhairc
Foraoiseachta
Forestry
Appeals
Committee

[REDACTED]
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June 30th 2021.

FAC Ref: FAC 416/2020

Subject: appeal in relation to Licence CN84411.

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

Felling Licence CN84411 was granted by the Department of Agriculture, Food and the Marine (DAFM) on June 24th, 2020.

Hearing

An oral hearing of appeal: FAC 416/2020 regarding the decision to issue the licence CN84411 was conducted by FAC on April 22nd, 2021.

Attendees:

FAC: Mr Des Johnson (Chairperson) Mr Pat Coman
Mr Luke Sweetman, Mr Dan Molloy.
Administrative Secretary: Mr Michael Ryan.
Applicant representatives: [REDACTED]
DAFM Representatives: Mr Donal Keegan, Ms Mary Coogan, Mr Alan Booth.
Appellant: [REDACTED]

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 and all other submissions before deciding to set aside and remit the decision of the Minister to grant licence CN84411.

The proposal is for the Afforestation of 19.88ha and 2785m of sheep proof stock fencing at Gloves West, Athenry, County Galway.

The original application submitted by the applicant referred to three plots, plot 1 (.84ha) Plot 2 (17.82ha) and plot 3 (1.22ha). Following a site visit by the Forestry Inspector on September 3rd 2019, revised Bio maps were submitted and it was agreed to increase the Bio plot areas to include all low-lying wet habitat areas. The revised subdivisions as outlined in the Technical Approval for Afforestation Licence document is as follows, plot 1 (17.49ha) plot 2 (.85ha) plot 3 (.52ha, Bio Plot) Plot 4 (.85ha) plot 5 (.21ha, Bio plot). Plots 1,2 and 4 are to be planted with 85% Sitka Spruce and 15% Broadleaf.

In line with details as provided by the DAFM, the project area is predominantly highly modified peat and peaty podzols in nature. The slope is predominantly flat to moderate <15%. The project area is crossed by and adjoins an aquatic zone. The vegetation types within the project area comprise of grass and rush. The percentage forest cover within the application townland is 8.99%, the percentage forest cover within 5km of the project site is 6.96% and the percentage forest cover within the underlying water bodies is .38%. The applicant has outlined as part of pre-approval submission that the ground preparation will consist of mounding with planting by slit method and 250kg of granulated rock phosphate per hectare to be applied.

The site is located in the Galway Bay South East WFD Catchment and within the Clarenbridge SC_010 Sub Catchment. There is a stream to the northern edge of the site, EPA name Kingsland_North (part of the Clarenbridge _020 water body) flowing in a south westerly direction, the WFD status is unassigned. There is also a stream on the south western edge of the site flowing in a south westerly direction, EPA name Ballygarraun_South, the WFD status is poor. Both streams join the EPA named Clarenbridge River continuing in a south westerly direction to Clarenbridge for which the WFD status is poor. The Clarenbridge river passes through Galway Complex SAC and Inner Galway Bay SPA entering the sea at Clarenbridge.

The applicant submitted an application pack which includes a Pre-Approval Submission Report, Bio maps and a Fencing Map. The applicant representative also provided a pre-screening document.

The application was referred to the DAFM Archaeologist and a reply was received on September 17th 2019. The archaeological report stated, the area proposed for afforestation does not contain any Recorded Monuments. The nearest monument is a field system 200m to the north.

The DAFM consulted the following agency websites on May 22nd 2020 as part of the in-combination report, the EPA, An Bord Pleanála and Galway County Council - decisions and considerations listed relating to domestic dwellings, agriculture shed, tyre storage facility, food store, salt barn & road maintenance shed, school renovation, school construction and

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waste water treatment plant. The DAFM iForis Map Viewer was also consulted, outlining two forest roads, three private felling applications and eight Coillte felling licence applications.

The DAFM carried out Appropriate Assessment Screening (AAS) on eleven Natura 2000 sites within 15km of the project site, all sites were initially screened in by the Forestry Inspector but later screened out following the completion of Appropriate Assessment Determination Screening (AADS)

The AADS was carried out on June 19th 2020 by a DAFM Ecologist. All sites examined were screened out. Slieve Aughty Mountains SPA was not reviewed by the DAFM Ecologist. Castletaylor Complex SAC, Lough Corrib SAC, Lough Rea SAC and Monivea Bog SAC were screened out due to lack of hydrological connection and the distance from site to SAC. It is determined there will be no significant effects on the qualifying interests (QI's) of this Natura site. Creggans Marsh SPA was screened out due to the distance from the proposed site (14.6km) which is outside the foraging range of the QI's on this Natura site.

Galway Bay Complex SAC was screened out due to distance from the site, 17km downstream of the proposed works area. The SAC is connected via the Kingsland North stream at the northwest of the site and the Ballygarraun South stream to the south west of the site. The Ecologist stated, both of these streams are first order streams and are likely to be slow flowing due to the flat topography. Both streams also connect to a third order river called the Clarinbridge. The stream to the northwest of the site joins this river 1.9km downstream while the stream to the south west travels 3.1km prior to joining the Clarenbridge river. Inner Galway SPA was screened out stating the site is located 14.5km from the proposed works area which is outside the foraging area for QIs of this Natura site. The SPA is also located c17km downstream of the proposed development site. Based on the reasoning set out above for the Galway Bay complex SAC, there will be no effect on water quality for these species. Lough Rea SPA was screened out stating the SPA is located 14.3km from the proposed site which is outside the foraging range for the QIs of this Natura site, there is also no hydrological connection so there will be no deterioration in water quality. Rahasane Turlough SAC was screened out stating the Afforestation site is not contained within a Karst landscape and no swallow holes have been identified. The area has been assessed as having low groundwater vulnerability and is located within a different aquifer to the Rahasane Turlough SAC. Due to lack of hydrological connection, it is determined there will be no significant effects on the qualifying interests (QI's) of this Natura site. Rahasane Turlough SPA was screened out stating the site is located c9km from the proposed works area which is outside the foraging area for the QIs of this Natura site. There is also no hydrological connection so there will be no effect on water quality.

The licence CN84411 was issued on June 24th 2020 with relatively standard conditions 1 – 12 and condition 13. Additional Environmental & Silvicultural Conditions.

- o Approval as per revised maps provided, September 2019.
- o Plot 3 and Plot 5 to be retained for Bio. Plot 5 should be increased to include all low-lying habitat and this should be protected from drainage.
- o A 20m unplanted setback is required from aquatic zones due to peat soils as per Environmental Requirements 2016.
- o Adhere to Forestry biodiversity guidelines
- o Adhere to Forestry and Water Quality guidelines.

There was one appeal against the decision to grant the licence. In summary the grounds of appeal contend.

- The decision does not comply with the provisions of the EIA, Habitats or Birds Directives.
- It is merely necessary to determine that there may be a significant effect to trigger Appropriate Assessment
- If the proposed development is within 15km of a Natura 2000 site it is screened in for Stage 2 assessment
- It is not appropriate to consider mitigation measures at AA screening stage
- The assessment carried out under Article 6(3) of the Habitats Directive must not have lacunae, and must have precise and definitive findings capable of removing all reasonable scientific doubt as to the effects on a protected site
- The catchment that the application is in should be stated
- A map showing relevant SACs and SPAs should be attached
- Details of all forestry operations in the area should be given
- It is the duty of the FAC to carry out screening for EIA and AA

The DAFM has provided a written statement in response to the grounds of appeal, summary as follows: The site was inspected by the DAFM Forestry Inspector on September 3rd 2019. Following the visit, revised maps were provided by the applicant to deal with a wetland area and possibly a Marsh Fritillary habitat area, both to be retained unplanted as Bio plots. The application was screened in and referred to the DAFM Ecologist for AA/NIS as per AAP5Nov19. The DAFM Ecologist carried out an AA screening determination report on June 19th 2020 screening out all eleven Natura 2000 sites from any effects on any Natura 2000 site and providing a rationale for doing so determining that the project will not adversely affect the integrity of any European site. The Forestry Inspector also highlights the fact that there are two in-combination reports both concluding that the project, when considered in-combination with other plans and projects, will not give rise to the possibility of any significant effect on any Natura site. The Forestry inspector also outlines that based on the conclusion presented to him by the DAFM Ecologist as per AAP5Nov19, he once again completed the AA screening and certified the file for approval with conditions based on revised maps submitted on September 3rd 2020.

The FAC held an oral hearing on April 22nd 2021, all parties were invited to attend and participate. The FAC sat remotely, the DAFM and the applicant representative participated remotely. The appellants did not participate or attend.

At the hearing the DAFM set out processing procedures undergone in issuing the licence, that the application was desk assessed and field inspected, that the application was referred to the DAFM Archaeologist only (reply received on September 17th 2019) and that the licence was issued on June 24th 2020. The Forestry Inspector stated the site was field inspected on September 3rd 2019 at the request of the registered Forester on behalf of the applicant. It was decided as part of the inspection that plots 3 and 5 are to be retained as unplanted Bio plots on the basis of a suspected Marsh Fritillary habitat and growing Devils Bit. The Forestry inspector

also stated that he screened in all of the Natura 2000 sites within 15km of the site as he felt it would be safer for Ecology to review also.

As part of FAC questioning, the DAFM was asked if they considered the in-combination statement in conjunction with the application. The Forestry Inspector and the DAFM Ecologist confirmed the in-combination report was taken into consideration and developments in the area were reviewed. The FAC also asked the DAFM to outline the basis of their decision to screen out Galway Bay SPA. The Ecologist stated the site was screened out due to intervening distance and the nature of habitats in the SPA and that there would be no effect individually or cumulatively on Galway Bay SPA. The FAC asked the DAFM what considerations were given to the protection of water quality in the Clarenbridge river. The DAFM Ecologist stated increased setbacks were included along the north western boundaries of the site adjacent to the Kingslan North river and along the south western boundaries adjacent to the Ballygarraun river. The DAFM were asked by the FAC if consideration was given to referring the application to Inland Fisheries Ireland (IFI). The DAFM responded stating, East Galway is not regarded as a fisheries sensitive area and that setbacks have been applied to the licence in addition to general conditions in place to protect water quality. The DAFM were also asked by the FAC for clarification on the screening rationale in relation to water quality for the river to the north of the site (EPA name Kingsland North) status, un-assigned. The Ecologist stated that both streams are first order streams, flowing south at a slow pace and that the streams have a natural buffering capacity combined with slow meandering waters. The DAFM was asked by the FAC if there were other drains on the site in addition to the drains on the Bio map. The DAFM stated there were other drains in addition to the drains outlined on the Bio map and that there was no visible water in the drains on the date of the visit to the site. The DAFM also pointed out that a 5m set back is to be applied to all drains on the site at planting, if the licence decision is upheld.

In considering the grounds of appeal, the FAC noted that some grounds of appeal relate to the obligations and functioning of the FAC and are not grounds related to the decision of the DAFM to grant afforestation licence CN84411.

The FAC considered the appellant's contention that the decision does not comply with the provisions of the EIA, Habitats or Birds Directives. The FAC firstly considered the appellants' contention that the decision does not comply with the EIA Directive. The EU Directive sets out, in Annex I, a list of projects for which EIA is mandatory. Annex II contains 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. Neither afforestation nor deforestation (nor clear-felling) are referred to in Annex I. Annex II contains a class of project specified as "initial afforestation and deforestation for the purpose of conversion to another type of land use". (Class 1(d) of Annex II). The Irish Regulations, in relation to forestry licence applications, require 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. The application is significantly sub-threshold for mandatory EIA. The evidence suggests that with the exception of this application CN84411, the approximate forest cover at present, within a distance of 5km from the proposal, is 6.96%. In the surrounding area there is agricultural grassland, some small forestry plots in a semi-rural setting with a mix of houses and farmyards

of which are not adjacent to or in the immediate vicinity of the proposed site. The DAFM considered the nature and scale of the proposal and outlined that the area is not within 3km upstream of an NHA, pNHA, SAC, SPA or a National Park, that the area is not in a High Amenity Landscape area, that the area does not contain or adjoin an archaeological site or monument or archaeological area, the project does not impact on a Way-Marked Way, the site is free of shell marl or highly calcareous soils, that the area is not high nutrient sensitive and the site is not within an area designated as sensitive to fisheries. Having considered the written evidence submitted by the DAFM, submissions at the oral hearing, the nature and scale of the proposal, and the screening procedures followed by the DAFM, the FAC have concluded that an EIA is not required in this case. The FAC is satisfied that the DAFM had adequate information before it to enable a preliminary screening for EIA and concurs with the DAFM's conclusion in the particular circumstances of this case

The FAC also considered the contention that the decision does not comply with the provisions of the Habitats or Birds Directives. The FAC notes that the appellant has not specified or presented evidence as to the presence of Annex IV species or other bird species and has not outlined reasons why the proposed development would threaten their protection. The licence provisions have afforded protection to the Annex II listed Marsh Fritillary. The FAC concludes there is no substantiated related reason on which to affect the decision.

The FAC considered the procedures followed by the DAFM in screening for AA. All Natura 2000 sites within a 15km radius were considered. Qualifying interests and conservation objectives were identified and the potential for significant effects was assessed.

In-combination projects as outlined above were taken into consideration. All sites were initially screened in by the Forestry Inspector for referral to Ecology. The DAFM Ecologist completed AADS on June 19th 2020 and screened out all Natura 2000 sites within 15km of the proposed site from any effect of the proposal and provided the reasons for doing so in his conclusion. Slieve Aughty Mountains SPA is 15.5km from the proposal and outside of the 15km radius used by the DAFM in AA screening. The QI's for the SPA are the Hen Harrier and the Merlin, and based on the associated foraging distances, the FAC can identify no error in the exclusion of the site from the DAFM Ecologists screening. The FAC is satisfied that the AAS and AAS Determination completed by the DAFM was consistent with the requirements of Article 6(3) of the Habitats Directive and that the conclusions reached were sound.

In relation to the appellant's contention that, 'It is not appropriate to consider mitigation measures at AA screening stage, the FAC could find no basis for the contention that mitigation measures had been considered in the screening out stage. The FAC is also satisfied that the screening exercise completed by the DAFM was consistent with the requirements of Article 6(3) of the Habitats Directive and that the conclusions reached were sound.

Following the conclusion of the hearing, and as a result of information provided at the hearing relating to additional man made drains on the site not outlined on the Bio map as submitted on September 3rd 2019, the FAC requested the following information from the applicant.

As part of the evidence provided at the oral hearing, the FAC are informed that additional drains exist on the site that are not evident on the application bio-maps or any drainage maps presented to FAC.

To assist the FAC establish the existence and facilitate the potential for effects of other additional drains on the site, the FAC requests the provision of a detailed bio-diversity map including all drainage especially outlining the following:

- *drainage and cultivation proposals*
- *existing streams adjacent to the site, including those on the North Western and Western boundary of the site and the direction of flow of these streams.*
- *cultivation type and direction*
- *appropriate aquatic buffer zones and archaeological exclusion zones*
- *the number, type and location of sediment traps - ensure that these are on the more level part of the topography.*

The applicant's representative submitted a revised Bio map of the site on May 6th, 2021 outlining additional drains on the site to what was previously submitted. The drainage map indicated water flow from the site in a north-westerly and south-westerly direction. The map also indicated a collector drain running parallel with the Kingsland river to the north west of the site and the Ballygarraun river to the south west of the site. The drains, highlighted as crossing the site, flowing in a north-westerly and south-westerly direction are indicated as bisecting the collector drain and flowing in the direction of the Kingsland river to the north west of the site and the Ballygarraun river to the south west.

Based on the information before it, the FAC considered that the DAFM made a significant error by not adequately ensuring the protection of water courses adjacent to the site, namely the Kingsland river to the north of the site and the Ballygarraun river to the south west of the site.

The FAC is not satisfied that it can be concluded with certainty that the proposed development would not impact on adjoining watercourse. Accordingly, the FAC has decided to set aside and remit to require the Minister to carry out a further analysis of the likelihood of the proposed development giving rise to adverse impacts on adjoining watercourse before making a new decision in respect of the proposed development

Yours sincerely.



Dan Molloy, on behalf of FAC

