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22nd July 2021

Subject: Appeals FAC808/2020, FAC809/2020, FAC810/2020, FAC812/2020 against licence decision
CN87158

Dear [REDACTED]

I refer to the appeals to the Forestry Appeals Committee (FAC) in relation to the above licence issued by Department of Agriculture, Food and Marine (DAFM). The FAC established in accordance with Section 14 A (1) of the Agriculture Appeals Act 2001 as amended, has now completed an examination of the facts and evidence provided by the parties to the appeal.

Background

Licence CN87158 for afforestation of 11.29 ha at Drumadorn, Co. Leitrim was granted by the DAFM on 13th October 2020.

Hearing

A hearing of appeal FAC808/2020, FAC809/2020, FAC810/2020, FAC812/2020 was held by the FAC on 7th July 2021. In attendance:

FAC Members: Mr. John Evans (Deputy Chairperson), Mr. Iain Douglas, Mr. Seamus Neely & Mr. Vincent Upton

Secretary to the FAC: Ms. Marie Dobbyn

Decision

Having regard to the evidence before it, including the record of the processing of the application and the decision by the DAFM, the notice of appeal, and submissions received, the Forestry Appeals Committee (FAC) has decided to vary the decision of the Minister for Agriculture, Food and the Marine to grant licence CN87158.

The licence decision pertains to afforestation of 11.29 hectares at Drumadorn, Co. Leitrim. The lands are described as enclosed, agricultural land on a flat to moderately sloped on a mineral, peat soil and with a grass/rush vegetation type. Planting would comprise of 85% Sitka spruce and 15% broadleaves and ground preparation would be through mounding without additional drainage. Fertilisation at a rate of 250kg per ha of granulated rock phosphate and manual and herbicide weed control in years 0-3 is proposed. Stock fencing of 1,385 metres is proposed. The application included site, environmental and operational information and a number of maps. The Bio Map submitted identifies a network of hedgerows on the land which would be retained along with existing trees and a setback from the

hedgerows would be left unplanted. A 30 metre unplanted setback is proposed from the buildings to the north of the lands to be planted. A relevant watercourse, drain, is marked on the map and a 10 metre setback is proposed. An archaeological feature is marked outside of the site and to the west. A section of land in the southeast is excluded and access and the location of the site notice are marked.

A site notice was indicated to have been erected at the public road which is connected to the site through a private laneway. A copy of the site notice is on the file. There were seven submissions from members of the public on the application, five of which are from individuals who live or own land in the area. No referrals to prescribed bodies were made. Notice of the decision is recorded on the DAFM website.

The DAFM recorded a screening for Appropriate Assessment of the proposal and identified three European sites within 15km of the proposal. These are 002348 Clooneen Bog SAC, 001818 Lough Forbes Complex SAC, and 004101 Ballykenny-Fisherstown Bog SPA. Each site is considered in turn with its qualifying interests and conservation objectives and reasons are provided for the screening conclusion. It is recorded that the reasons are the absence of any aquatic zone within or adjoining the project area, the absence of any significant relevant watercourse(s) within or adjoining the project area and Distance. The DAFM recorded a consideration of the application across a range of criteria, including existing land use, cumulative effect and extent of project, designated and non-designated habitats, archaeology, and landscape and determined that the project was not required to undergo the EIA process. The licence was issued on 13/10/2020 with conditions.

There are four appeals against the decision and the Notices of Appeal and grounds were provided to all parties. The grounds of FAC808/2020 highlight water quality in Clooncoose lake and from a private well to livestock. It is submitted that sunlight would be restricted, and grass growth would be inhibited for silage and pasture. Concern is expressed in relation to the laneway leading to the lands and suitability for heavy vehicles when harvesting. It is submitted that there is a possibility of trees blocking phone signal which could be needed to contact a vet on short notice. It is submitted that the plantation would provide cover for pine martin and "other predatory animals" which will deplete current wildlife and ecosystem. It is submitted that there is a risk of fire damage to the Appellant's farm and adjacent properties.

The grounds of FAC809/2020 submit that a private well serving four houses and farm buildings is in close proximity to the proposal. It is submitted that access is via a narrow branch of a county lane and passes the Appellant's home and that right of way through their land is for private use only. It is submitted that the proposal would shade and obstruct their view and devalue their property. It is submitted that they rely on a wireless internet and phone signal. It is submitted that there is a risk of fire to their farm and property. It is submitted that there could be pollution of natural spring wells which their livestock drink from and flows to Cloncoose lake and that a raised bog in the proposed area would dry out. The Notice of Appeal included a map highlighting a number of the features referred to in the grounds.

The grounds of FAC810/2020 submit that the Appellant's private well supply is from the proposal area. It is submitted that the proposal would restrict light from their farm and impact on their living and devalue

their farm. It is submitted that they pay for the upkeep of the laneway and express concern regarding phone and internet signal.

The grounds of FAC812/2020 submit that they have a beneficial interest in the lands and that legal proceedings are on-going. It is submitted that the access roadway is not suitable for heavy machinery and would cross another parties farmyard. Concern is expressed regarding impacts on water quality in local streams, Cloncoose lake and a deep bored private well. It is submitted that the proposal would obscure the view from their home and create a feeling of being closed in and would impact on phone signals which might be needed in an emergency. It is submitted that the lands have several springs and would not be suitable for heavy machinery. The grounds also refer to a submission made by the Appellant at the application stage raising a number of issues in the grounds of appeal and a copy of the submission was included with the Notice of Appeal.

In a statement to the FAC in response to the appeals, the DAFM submitted the processing stages and dates of the application, noting that it was desk and field assessed, no referrals to prescribed bodies were required, submissions from the public and that the decision was issued in accordance with DAFM procedures, S.I. 191/2017 and the 2014 Forestry Act. The DAFM Inspector submitted that the site had been desk and field assessed and accessed through a public road and then a laneway passing farm buildings. It is submitted that the farm buildings adjoining the lands are part of the same folio as the proposal lands and that access was considered acceptable following inspection. It is submitted that the three closest dwellings are 70 metres, 90 metres and 135 metres from the site and that the setback under the Forestry Standards Manual 2015 is 60 metres. It is submitted that the DAFM have access to all Irish Water infrastructure and group water schemes including abstraction points and zones of contribution and that these are not mapped in the area. It is submitted that the risk of fire is low given the nature of the surrounding lands and that forest owners similar to other landowners must manage and plan for a risk of fire. It is submitted that phone signal is a matter between the person impacted and the provider and that dwelling setbacks are all in excess of 60 metres. It is submitted that the site was assessed against the requirements of the afforestation scheme and that the application and maps are acceptable in regards the Environmental Requirements for Afforestation. It is submitted that legal disputes regarding the land are a matter for the parties and that no pending issues were identified on Landdirect at the time of making the decision.

In addressing the grounds of appeal, the FAC considered, in the first instance, as to the potential impacts on dwellings and adjoining land. The lands are situated in a rural area with dwellings to the northeast and west. The Environmental Requirements for Afforestation (DAFM, 2016) require a minimum setback of 60 metres from dwellings or 30 metres with the written agreement of the neighbouring dweller. Aerial imagery of the lands show that the Appellants' dwellings are greater than this distance. In addition, the proposal includes 30 metre setbacks from the buildings to the north of the lands which would reduce impacts on visual connectivity between dwellings. The Appellant's dwellings are set back from and are not situated north of the proposed planting. The FAC is satisfied that the proposal would not have a significant detrimental effect on residential amenity.

The lands are crossed and bordered by a network of hedgerows which would be retained and an unplanted setback is included. The application states that the broadleaf component of the proposal would be planted on the boundary of the lands. The FAC considers that such measures will reduce the impacts to adjoining lands. In relation to phone and internet signals, the FAC considered that such issues are matters for the service providers and that no convincing evidence was provided to it that the proposal as licenced would have a significant impact on communication such that the decision might be effected. The lands are enclosed agricultural grasslands and are surrounded by similar lands and some existing forests to the south. The FAC considered that such lands are not associated with a significant risk of fire. As noted, dwellings are well set back from the proposal and setbacks of 30 metres are proposed from agricultural buildings to the north. The FAC is not satisfied that the Minister has erred in the making of the decision in relation to possible impacts on neighbouring lands or dwellings.

In relation to water quality, the Biomap provided by Applicant identifies a relevant watercourse, a drain, flowing southerly to join a stream, named as the Fearglass North in EPA maps and marked on historic six inch maps, which continues southerly to join the Fardrumman stream below Clooncoose lough and continues southeasterly. The watercourse joins the Fardrumman stream O10 waterbody which flows from the southwest of the townland and has been assigned a Good status and Not At Risk by the EPA in relation to the Water Framework Directive (WFD). Forestry has not been identified as a pressure in the overall subcatchment. The lands are described as enclosed, agricultural land on a predominately mineral soil type. The lands are not designated as being acid or fisheries sensitive under the DAFM protocols outlined in the *Forestry Standards Manual* and are not classified as being at high risk of nutrient enrichment based on data published by the EPA on <https://gis.epa.ie/EPAMaps/>. The Applicant has included a 10 metre setback from the drain in the Biomap and the licence conditions require adherence with the *Environmental Requirements for Afforestation* and other standards which include measures related to the protection of water quality. The DAFM recorded that the proposal as licenced would not result in a significant impact on aquatic zones. The FAC is not satisfied that the Minister has erred in relation to the protection of water quality.

In relation to drinking water, appeal FAC809/2020 includes a map identifying the location of a well, described as a deep bored well. The *Environmental Requirements for Afforestation* requires a setback of 20 metres from water abstraction points and the well is sited at a considerable distance beyond this. The Longford Ballinalee (IE_SH_G_149) Groundwater body has a Good status and Not at Risk in relation to the WFD objectives. The Geological Survey of Ireland have generated a Groundwater Vulnerability map, which represents the intrinsic geological and hydrogeological characteristics that determine the ease with which groundwater may be contaminated by human activities and does not classify this area as being at a high risk. The FAC does not consider that there is any convincing evidence that the proposal would have a detrimental impact on drinking water and is not satisfied that the Minister has erred in this regard.

In relation to the likely significant effects of the proposal on the environment, the FAC noted that the EU Environmental Impact Assessment (EIA) 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. 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 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. The decision under appeal relates to a licence for afforestation of 11.29 ha, so is sub threshold for mandatory EIA as set in Irish Regulations.

The land to be planted is described as private, enclosed, agricultural land which has been employed for the rearing of livestock. The DAFM recorded a consideration of the application across a range of criteria, including existing land use, cumulative effect and extent of project, designated and non-designated habitats, archaeology, and landscape and determined that the project was not required to undergo the EIA process. The FAC noted that the lands are not in a high amenity landscape or area of outstanding natural beauty and the area has been assigned a low sensitivity/high capacity to accommodate forestry in the Leitrim County Development Plan. The lands are situated outside of any area designated for nature conservation and the closest Natural Heritage Area (NHA) is Lough Rynn NHA which flows from Lough Rynn pNHA and a number of associated lakes are pNHAs. These sites are situated in a separate catchment and are over 5km to the west of the proposal.

The FAC further considered that under Article 6(3) of the Habitats Directive, any plan or project not directly connected with or necessary to the management of a European site, must be subject to an assessment of the likely significant effects the project may have on such a designated site, either individually or in combination with other plans and projects, having regard to the conservation objectives of that designated site. The proposal is not connected with or necessary to the management of a European site and is not situated within an area designated for conservation. The FAC consulted publicly available information and identified the same European sites as identified by the DAFM, which are c.14km from the proposal area. The FAC considered the screening recorded by the DAFM, including the consideration of other plans and projects, and the stated reasons for the screening conclusions and was not satisfied that an error had occurred. The FAC is not satisfied that the Minister erred in relation to EIA or the protection of conservation sites.

The grounds of appeal FAC812/2020 submit that the Appellant has an interest in the land. The FAC reviewed the folio on landdirect.ie and noted that the lands are owned by the Applicant and that an interest was recorded in the name of the Appellant and dated 18th December 2020 which is after the date of the licence being issued. Furthermore, it appeared to the FAC that the matters in question were a civil matter which would be appropriately adjudicated by the Courts. The FAC is not satisfied that the Minister had erred in the making of the decision in this regard.

Regarding the access to the lands, it appeared to the FAC that the lands have access through a shared laneway that has been employed for agricultural purposes. Any future forest road works or felling will

be subject to a licencing process. While traffic would be likely to increase during operations, the FAC considered that this would be limited to a number of weeks likely to commence at least 15 years after establishment and then on an approximate five year cycle in line with standard forest management practices. The FAC did not consider that this could be considered as resulting in significant effects. The FAC considered that the granting of the licence did not remove any obligations on the Applicant under other statute or provide or remove additional rights or obligations on the Applicant other than the planting of the lands as applied for. The FAC is not satisfied that the Minister had erred in the making of the decision in relation to access to the lands.

In reviewing the Folio and having regard to the record of the decision, the FAC noted that a Right of Way is registered at the southeastern boundary of the lands that provide for access to a portion of bog with turbarry rights which has been excluded from the Application and is owned by another party. Regulation 5 (2) of the Forestry Regulations 2017 (SI 171 of 2019) requires an application for an afforestation licence to include a map that clearly shows a number of features including wayleaves. The *Forestry Standards Manual* (2015; page 13) states that “*tree planting is not permitted on a right of way, and such areas must be excluded from proposed plantations*”. While the licence requires adherence with the *Forestry Standards Manual* (2015) the FAC has not been provided with a map identifying this Right of Way on the record and is satisfied that this represents a serious error. As the Right of Way provides for access and there is a lack of clarity regarding the use of the access the FAC is further including a 10 metre unplanted setback from the right of way. Therefore and for the avoidance of doubt, the FAC is varying the licence conditions to include the following condition,

No tree planting is permitted on or within 10 metres of the right of way at the southeastern corner of the lands as identified and described in Folio 14265, County Leitrim. Reason: For clarity and to ensure compliance with Forestry Standards and Good Forest Practice.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal, and other submissions received. The FAC is satisfied that a serious error was made in making the decision. The FAC is thus varying the decision of the Minister regarding licence CN87158, as described, in line with Article 14B of the Agricultural Appeals Act 2001, as amended. In varying the decision, the FAC considered that the proposal would be in keeping with Good Forestry Practice and Government policy.

Yours sincerely,

A large black rectangular redaction box covering the signature of Vincent Upton.

Vincent Upton, On Behalf of the Forestry Appeals Committee