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18th May 2021

Subject: Appeals FAC439/2020, 440/2020, 441/2020, 442/2020, 443/2020, 444/2020, 445/2020,
446/2020 regarding licence CN85331

Dear [REDACTED]

I refer to the appeals 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, as amended, has now completed an examination of the facts and evidence provided by all parties to the appeal.

Background

Licence CN85331 for the planting of 4.17 ha at Magheraboy, Co. Monaghan was issued by the Minister for Agriculture, Food and the Marine on 26th June 2020 with conditions.

Hearing

A hearing of appeals FAC439/2020, 440/2020, 441/2020, 442/2020, 443/2020, 444/2020, 445/2020, 446/2020 was held by the FAC on 7th May 2021. In attendance:

FAC Members: Mr. Donal Maguire (Deputy Chairperson), Mr. Derek Daly, Mr. Iain Douglas, Mr. Vincent Upton

Secretary to the FAC: Ms. Marie Dobbyn

Appellant and Appellants' Representative: [REDACTED]

DAFM Representatives: Ms. Mary Coogan, Mr. Jhan Crane

Applicant: [REDACTED]

Decision

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notice of appeal, submissions made and all other submissions received, and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to vary the decision of the Minister regarding licence CN85331 to exclude Plots 1 and 2 from the licence.

The licence decision pertains to the planting of 4.17 ha at Magheraboy, Co. Monaghan. A mixture of broadleaf species are proposed including pedunculate oak, birch, hazel, willow and other broadleaf species. Site preparation would involve woody weed removal and no additional drainage or use of fertiliser. Weed control would be through manual methods and herbicide use in years 0 and 1. According to the record, the predominant soil type underlining the project area is predominantly brown podzolics in nature and the slope is predominantly flat to moderate (<15%). The project area is

described as being crossed by or adjoining an aquatic zone and the vegetation type within the project area comprise wet grassland, improved grassland and hedgerows. The proposal includes 1,360 metres of fencing.

There are no European sites within 15km of the proposal and the DAFM recorded a conclusion that there was no likelihood of a significant effect on any European site, and that Appropriate Assessment not required. The proposal was also considered across a range of criteria and the DAFM recorded a determination that the proposal should not be subject to the Environmental Impact Assessment process. A submission from the Appellant at the application stage is on record and raises issues regarding the site notice and impacts on their dwelling and local environment. The proposal was referred to Inland Fisheries Ireland which replied stating that they have no objection to the application provided that all work is carried out in accordance with the Environmental Requirements for Afforestation. The original application was for 5.21 ha and this was amended with a new Biomap and species information submitted. The application was submitted to have been desk and field assessed. The application was approved on 26th June 2020.

There are eight appeals against the decision which contain the same grounds. The grounds submit, in summary, that the site notice was not clearly visible or legible from the public road. They submit concerns regarding impacts on the shared entrance and on local traffic and the public road. It is submitted that the drinking well for the Appellants' house is within 6 feet of the boundary and that they are concerned regarding impacts on the well and pump house as they considered that water would be impacted and that they were not provide with sufficient information regarding the proposal. It is submitted that the proposal would cause shading and loss of light to dwellings and attract vermin. It is submitted that the proposal would result in impacts on water and habitats when the trees are cut down and would represent a fire risk.

In a statement to the FAC, the DAFM submitted that the decision was made following their procedures, Forestry Regulations 2017 and the Forestry Act 2014. It was submitted that the proposal is required to adhere with the requirement not to plant within 60 metres of a dwelling and other provisions of the licence and that this would avoid impacts on light and air. The DAFM submitted that the submissions made were considered and the original application was amended. It is submitted that both site notices were visible from the public road and that two were erected, one for each block of forest, and that the notice at the northern block was 20 metres from the edge of the public road. It is submitted that one entrance serves both properties and that shared rights of way may be discussed between the individuals. It is submitted that all road users shall adhere to relevant legislation and council road restrictions, that the proposal will adhere with the Forest Water Quality Guidelines and that no trees or drains will be within 10 metres of a watercourse, that no planting will take place within 30 metres of the Appellants well, and that as this is a native woodland proposal minimal soil disturbance would occur. It is submitted that in addition to no planting occurring within 60 metres of a dwelling that the combination of broadleaved woodland and surrounding pasture land do not create a high risk of fire to dwellings.

An oral hearing of the appeal was held and attended by representatives of the DAFM and one of the Appellants representing all Appellants. The Appellant outlined their concerns and restated their written submissions. It was submitted that their concerns relate to the northern sections and that they did not believe that the concerns raised at the application stage had been addressed. The DAFM restated their written submission and submitted that the submission made was considered and that the reduction in area and submission of new maps reflects this. It was submitted that the Applicant had been requested to identify the well in line with the Forestry Standards Manual but that this did not appear to have been done. It was submitted that the design and guidelines attached to the licence would address concerns regarding water quality. It was submitted that the site notice at the north was close to and visible from the public road.

The FAC considered in the first instance the issue of the site notice and the provisions of Regulation 11 of the Forestry Regulations 2017 regarding public consultation,

11. (1) Where an application involves—

(a) afforestation, or

(b) forest road works

the applicant shall, before the making of the application, erect a notice in a form determined by the Minister, at the entrance from the public road to the land to which the application relates or, where no entrance exists, at the point where it is proposed to create an entrance, so as to be easily visible and legible by persons using the public road, and shall not be obscured or concealed at any time.

...

(3) Where the Minister considers that the site notice is not sufficient to comply with the requirements of paragraphs (1) and (2) or does not adequately inform the public, the Minister may require the applicant to erect or fix such further site notice or notices in such a manner and in such terms as he or she may determine.

In this case site notices were erected at two locations separately covering the northern plots (Plots 1 & 2) and the southern plots (Plots 3 & 4). At the oral hearing it was submitted that two notices may have been erected at the southern plots and that at least one was positioned at the public road. The Appellant submitted that their concerns related to Plots 1 & 2. The site notice for these northern sections was erected on a gate to the lands and on private property. There was a variation between the Appellant and the DAFM in relation to the distance from the public road with the former submitting 40 metres and the latter 20 metres. In considering aerial imagery of the lands the FAC considers that a discrepancy would arise depending on where the edge of the public road might be considered at an entrance of this nature but that the gate appeared to be at least 20 metres from the public road and on private property beyond a walled entrance. The FAC considered that, while it would have been visible, it was likely that the site notice would only have been legible to a member of the public if they were to

enter private property and that it would not be legible from the public road. In this regard, the FAC considered the site notice at this point to be deficient and that this represents a serious error.

The FAC considered the grounds that related to the use of a shared entrance. It appeared to the FAC that such issues constituted civil matters between the parties that would be more suitably adjudicated on by the Courts.

Regarding the Appellant's well, as submitted at the oral hearing the Forestry Standards Manual 2015 states,

6.5.10 Points of water abstraction

The setback distance in relation to pump houses and substantial tank-type reservoirs is 30 metres (i.e. as for dwelling houses and associated buildings, without the need to obtain the owner's consent). A 30 metre setback also applies to wells and boreholes. Applicants and Registered Foresters must ensure that the location of any water abstraction points within the proposed area is clearly marked on the Biodiversity Map. (Page 28)

It was submitted at the oral hearing that the DAFM had requested the amendment of the Biomap to include the location of the Appellant's well but that this had not been complied with. The FAC considered this to be a serious error and that a new Biomap would be required that provides information in compliance with the Forestry Standards Manual and the requirements of the Minister for Agriculture, Food and the Marine.

In relation to water quality, the proposal involves the planting of mixed native broadleaf species on agricultural land and is licenced to adhere with the Forestry Standards Manual and Environmental Requirements for Afforestation which include the avoidance of operations within 10 metres of a watercourse. No soil disturbance other than planting by spade is proposed and no fertiliser would be employed. Herbicide would be employed in the establishment of the crop and would be required to be employed in line with good practice, relevant legislation, and the licence conditions. The land is currently in agricultural use for livestock. The FAC does not consider that the proposal would pose a risk to water quality in relation to domestic purposes or biodiversity. In relation to the objectives of the Water Framework Directive, the FAC considered that the proposal would be likely to improve water quality in local waterbodies.

The proposal would be setback 60 metres from a dwelling and in an agricultural landscape populated by mature hedgerows. A section to the south and southwest of the Appellant's dwelling had been excluded from the original application prior to licencing. The FAC does not consider that the proposal would significantly reduce light or air circulation to the Appellants dwelling to a significant degree and was not satisfied that the Minister had erred in this regard.

The proposal is for the planting of mixed, native broadleaf species on agricultural land and a mineral soil. The land is surrounded primarily by pasture land. The proposal would be setback from dwellings by 60

metres. The FAC did not consider that there was any evidence before it to consider that the proposal would create a significant risk of fire.

In considering the appeal the FAC had regard to the record of the decision, the submitted grounds of appeal, and submissions received. The FAC is satisfied that the site notice for the northern plots (plots 1 and 2) was not erected in a manner such that it would be legible from the public road and that the Appellants' well was not identified on the submitted Biomap and that these represent serious errors. Should the Applicant wish to proceed with these plots a new site notice, application and assessment by the DAFM would be required. The FAC is therefore varying the decision to exclude Plots 1 and 2 from the licence. The decision regarding Plots 3 and 4 are not affected by this decision.

Yours sincerely,

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

Vincent Upton / On Behalf of the Forestry Appeals Committee

