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15th October 2021

Subject: Appeal FAC 051/2021 relating to Licence CN86803

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 14A(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.

Licence.

The licence is for 5.92 Ha of GPC 4 afforestation at Shean, Edenderry, Co. Offaly. The application was submitted to the DAFM on the 13/07/2020 and was accompanied by a Drainage Report. Five third-party submissions were received on the licence application. The Department of Agriculture, Food and the Marine (DAFM) approved the licence on the 11/02/2021 with a number of standard conditions.

There is one appeal against the decision to grant the licence.

Forestry Appeals Committee.

The appeal was considered by at the sitting of the FAC held on 06/09/2021. The FAC Members present were; Mr. Myles Mac Donncadha (Deputy Chairperson), Mr Derek Daly and Mr. Iain Douglas.

Decision.

Having regard to the evidence before it, in particular the full DAFM record of the decision, the notice and grounds of appeal, a post-appeal submission from the appellant and a Statement of Fact (SoF) provided by the DAFM and the considerations set out hereunder, the FAC has decided to affirm the decision of the Minister to grant licence Reference CN86803 at Shean, Edenderry, Co. Offaly.

Background.

The Inspector's Certification Report (with a spatial run dated 02/09/2020) indicates that a desk assessment only was carried out on the site of the proposed afforestation and describes the soil type underlying the project area as predominantly highly modified peat & peaty podzols. The slope is predominantly flat to moderate (<15%). The project area is not crossed by or adjoins an aquatic zone(s). The vegetation type(s) within the project area comprises grasses and rushes.

The report notes only one Natura 2000 site as being within 15Km of the proposed afforestation; The Long Derries, Edenderry SAC (Site Code 000925). The proposal is screened out for Appropriate Assessment (AA) on the basis that the project area is downstream from the Natura site, and the subsequent lack of any hydrological connection.

There is an in-combination assessment on file carried out by the DAFM dated 08/02/2021 which concluded that there is no potential for the project to contribute to any effect on The Long Derries, Edenderry SAC when considered in combination with other plans and projects.

The Inspector's Certification Report also contains an assessment of the environmental factors relating to the proposed afforestation in order to determine whether the proposal requires Environmental Impact Assessment and concludes that it is not necessary to subject the proposed afforestation to EIA.

The licence application was referred to Offaly County Council which replied on 19/07/2020 pointing out that the site was adjacent to a tributary of the Figile River and contamination of that watercourse should be avoided and that the planting should be carried in accordance with DAFM Guidelines.

Appeal.

There was one appeal against the decision to grant the licence. The grounds of appeal are summarised as follows:

1. (a) Planting is not 60m from house & associated buildings including a well & pumphouse.
(b) No account has been taken of the appellant's planning permission.
(c) There is no setback for the ESB line
2. (a) The appellant's land adjoining the site floods and that the percolation area has to be replaced.
(b) Site is in a floodplain.
3. There is no fire access as the gates to the access road are permanently locked.
4. The planting will devalue the appellant's property and interfere with views.
5. The access road entrance does not comply with the 100m required by DAFM Guidelines

Hearing.

At the hearing, the FAC had before it the full DAFM record of the decision, the notice and grounds of appeal, a post-appeal submission from the applicant and a Statement of Fact (SoF) provided by the DAFM dated 30/07/2021 confirming the administrative details of licence application CN86803 as outlined above and stating that the DAFM is satisfied that all criteria in its standards and procedures had been adhered to in the making of the decision on this licence application.

The FAC also had before it a SoF by the DAFM Forestry Inspectorate dated 06/07/2021. The Inspector confirmed that the relevant AA procedure in operation at the time was applied and responded to the grounds of appeal.

The FAC had before it a post-appeal submission from the appellant dated 19/08/2021 which reiterated a number of the original grounds of appeal.

Consideration by the FAC.

The FAC consulted with publicly available mapping provided by the Environmental Protection Agency, the OSI, the Forest Service, and other on-line services.

Aerial photography including that submitted with the application shows the existing landuse of the site as agriculture. The site shown on the revised biomap dated 01/07/2020 is in two Plots. Plot 1 on the east of the site is bounded by a farm road to the north and east and agricultural grassland to the south and west with part of the southwest boundary adjoining a large dwelling. Plot 2 on the west of the site is bounded

by the same farm road to the north and agricultural grassland and two dwelling to the west and the same large house to the south.

Soil types on the site identified on the EPA mapping are cutaway/cutover basin peats with some blanket peat.

The overall WFD Catchment is the Barrow Bay Catchment and the Sub-Catchment is Figile _SC_10. The nearest identified waterbody sharing the same river sub-basin as the site is the Figile_030 which flows west to east close to the northern site boundary before turning south east away from the site. This waterbody eventually joins the River Barrow & River Nore SAC (Site Code 002162) some 25 km hydrologically to the south. The Water Framework Directive (WFD) Assessment of this river waterbody is that it is of Moderate status in the 2013-18 period and that it is At Risk from Industry, Extraction and Hydromorphological change in information provided by the EPA. The site is underlain by the Cushina IE_SE_G_048 groundwater body which is Not at Risk.

The proposed afforestation is not within a Natura 2000 site nor is it required for the management of a Natura 2000 site. The FAC confirmed that The Long Derries SAC contained in the Inspector's Certification AA Screening is the only one within 15km of the site and that it was screened out for AA.

The FAC noted that DAFM completed and recorded an in-combination report that concluded that the project proposed under CN86803, individually or with other plans or projects, would not adversely affect the integrity of The Long Derries SAC.

The FAC noted that the DAFM recorded a consideration of the application across a range of criteria relevant to the development proposed, including water, soil, terrain, slope, designated areas, landscape and cumulative effects, and determined that the project was not required to undergo EIA. The FAC is satisfied that the range and type of criteria considered is appropriate for DAFM to determine whether an EIAR was required having regard to the nature, scale and location of the proposal.

The site would appear to be located in an Area of High Amenity in Offaly County Development Plan 2014-2020 however this area is not referenced in the text of the plan nor was the issue raised by Offaly County Council in its response.

In addressing the grounds of appeal, the FAC considered the set out below.

Forestry Set-back.

The appellant contends that the required forestry set-back of 60m from dwellinghouses and associated buildings and pumphouses (which does not require the consent of the owner of the dwellinghouse) and the required set-back from the electricity powerlines have not been complied with. The FAC noted that the biomap submitted by the applicant dated 01/07/2020 states on the legend that the set-back from dwellings will be 60m and 10m from roofed farm buildings and that the corridor for ESB lines will be 20m. No information is given on the legend as to the set-back from a pumphouse.

The FAC noted the provisions of Section 6.4 of the Forestry Standards and Procedures Manual 2015 regarding set-back from dwellinghouses & associated buildings, ESB corridors and Points of Water Abstraction (including pumphouses) and the requirement under Condition 2 of the licence for the applicant to complete all works in accordance with the measures set out in the Environmental Requirements for Afforestation and the Forestry Standards Manual (as amended by periodic Circulars).

The FAC therefore considered that the DAFM had not erred in its processing of the application as it relates to this ground of appeal.

Planning Permission.

Having examined the Planning Authority records, the FAC noted that the most recent planning permission on the appellant's site is 07/1286 for the retention of existing stables (however the appellant's appeal submission includes drawings which show these stable buildings as being residential). There is no evidence that the conversion of the stables to residential accommodation was authorised by a planning permission and therefore the only authorised use of those buildings is as stables as described in planning permission 07/1286. Stables are regarded as farm buildings based on the definition of agriculture under the Planning & Development Act 2000 (as amended) and as such subject to the control of afforestation set out in the Environmental Requirements for Afforestation and the Forestry Standards Manual referred to in Condition 2 of the licence. The FAC therefore considered that the DAFM has not erred in its processing of the application as it relates to this ground of appeal.

Flooding.

The FAC consulted the OPW Floodmaps website and noted that no Single or Recurring Past flood Event is recorded in vicinity of the proposed afforestation or that the area was liable to pluvial flooding. The FAC noted from the District Inspector that it appears that flooding referred to in the appeal was caused by a blocked outlet to an external drain and not by poor or inadequate drainage on site and that the site drainage report confirms that the site can be adequately drained as per Forest Standard Manual and silvicultural requirements. The FAC therefore considered that the DAFM had not erred in its processing of the application as it relates to this ground of appeal.

The threat of forest fire to the dwelling.

The FAC noted the requirements set out in the Forestry Standards Manual 2015 stating that planting shall not take place within 60m of any dwelling or 30m with the written consent of the owner and that Condition 2 of the licence mandates compliance with the Forestry Standards Manual amongst others. The FAC also noted that the site itself and surrounding lands are currently agricultural pasture, a type of vegetation and land management that is not conducive to the initiation or spread of fire. While all landowners must be conscious of and be prepared for the risk of fire, the FAC did not consider that the proposal as specified would represent a significant risk of fire in the locality and was not satisfied that an error was made on this matter.

Devaluation and Views.

The FAC noted the requirements set out in the Environmental Requirements for Afforestation (DAFM, 2016) requiring that planting shall not take place within 60m of any dwelling (or 30m with the written consent of the owner) and that Condition 2 of the licence mandates compliance with those requirements, furthermore, the proposal itself indicates a 60m set-back from dwellings. The FAC is not satisfied that an error was made in relation to possible impacts on neighbouring lands or dwellings.

Access.

The FAC noted that the "*Technical Standard Design of Forest Entrances from Public Roads*" quoted by the appellant refers to the construction of new forest entrances and improvement works to existing forest entrances from the public road. While the DAFM SoF did not address this ground of appeal, the FAC noted that access to the proposed afforestation is by an existing farm road which already has a direct entrance onto the public road, the R401. Given that this is not a new forest entrance nor an existing forest entrance the FAC is not satisfied that an error was made on this matter.

Conclusion

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal and the DAFM Statements of Fact and the appellant's post-appeal submission. The FAC is satisfied that no serious or significant error or series of errors was made in making the decision or that the decision was made without complying with fair procedure. The FAC is thus affirming the decision of the Minister regarding licence CN86803 in accordance with Section 14B of the Agricultural Appeals Act 2001, as amended. In deciding to affirm the decision, the FAC considered that the proposed development would be consistent with Government policy and good forestry practice.

Yours sincerely,

A black rectangular redaction box covering the signature of the official.

Iain Douglas,
On Behalf of the Forestry Appeals Committee

