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12th October 2021

Subject: Appeal FAC094/2021 against licence decision CN87317

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) in relation to the above licence refused by the Minister for 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 CN87317 for afforestation of 3.1 ha at Slievenagloagh, Co. Louth was refused by the DAFM on 6th May 2021.

Hearing

A hearing of appeal FAC094/2021 was held by the FAC on 17th September 2021. In attendance:

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

Secretary to the FAC: Ms. Marie Dobbyn

Decision

Having regard to the evidence before it, including the record of the decision by the DAFM, the notice of appeal, and submissions received, the Forestry Appeals Committee (FAC) has decided to set aside and remit the decision of the Minister for Agriculture, Food and the Marine in relation to licence CN87317.

The decision relates to an application for an afforestation licence for 3.1 ha at Slievenagloagh, Co. Louth for the planting of a mixed species native woodland. The lands are described as enclosed, agricultural land on a mineral soil with a southerly aspect and with a Grass, Grass Rush, Bracken/Briar, Furze vegetation type. Site preparation would be through Woody Weed Removal, Mounding, Inverted scrap mounds, without additional drainage, fertiliser application, or chemical weed control. Species to be planted are downy birch (45%), Scots pine (20%), sessile oak (15%), and other additional broadleaves (20%). The application included a number of maps including a Biomap showing the outline of site and environmental features includes a relevant watercourse running north to south.

The application added,

Any rock outcrop sections that are unplantable due to shallow soils, will be GPSd out at form 2 stage and not claimed for grant aid.

Minimum stocking rate of 2,500 per ha applies for NWS GPC10 Scenario 5.

The application was referred by the DAFM to Louth County Council, An Taisce and the NPWS. The NPWS replied stating that they had no comment to make on the application while the County Council and An Taisce did not reply to the referral.

The record shows two site notices erected, one at the entrance to the land and one at the closest point on the public road. No submissions were made on the application.

The Minister refused the application on 06/05/2021 with the following reasons provided,

- Rock Outcrop , - Environmental Considerations , - Incapable of producing commercial crop YC>14 , - Land Unplantable , - Landscape Considerations , - Outside scope of Scheme , - Notwithstanding the intended exclusion of rock outcrop at grant aid the area is silviculturally and environmentally unsuitable. The application has rock outcrop and associated shallow soils in excess of 25 percent of the area. Photo 12 of unsuitable land in the Land types for afforestation document is directly comparable. The application is ineligible. The site is exposed, has steep erodible soils, is in an internationally valued landscape.

There was one appeal against the decision and the notice of appeal and grounds of appeal were provided to the parties. The grounds submit that there are loose rocks on site but no obvious exposed rock. It is submitted that there are no obvious environmental considerations/issues and that a relevant watercourse is on site but mapped. It is submitted that the land is plantable with sufficient soil depth, and reference is made to photographs provided. The appeal included a number of photographs including a number of soil pits with the depth of soil marked and an overview map of their location and the local landscape. It is submitted that the soil samples show that the site is capable of supporting a productive forest and that the forest is being planted for environmental rather than commercial reasons. Reference is made to other forests in the area submitted to be growing productively and mature trees already on the site and an example of regeneration on the site of non-native tree species. It is submitted that mixed native woodland would enhance the landscape and that the southern section is not visible from public road. The submission contends that the lands are more comparable to scenario 5(a) of Native Woodland Scheme than to photo 12 of Land Types for Afforestation and very capable of producing birch dominated native woodland.

In a statement to the FAC in response to the appeal, the DAFM submitted the details and dates of the processing of the application and that the decision was issued in accordance with their procedures, S.I. 191/2017 and the 2014 Forestry Act. The statement submits the details of the processing of the application by the District Inspector. It is submitted that the application has rock outcrop and associated shallow soils in excess of 25 percent of the area which excludes it from the afforestation scheme in line with the Forestry Standards Manual. It is submitted that while the application stated that areas of rock

outcrop would be excluded at the grant aid stage that this would be material to the application and should have formed part of the application. Photos described as having been taken on the day of a site visit were submitted and, it is suggested, show areas of rock outcrop and boulder fields. Reference is made to historic mapping of the area and the symbols describing the lands and that the nature of the lands can't be changed. The representativeness of the soil pits sampled by the Appellant is queried and it is suggested that the photos show the land to be unsuitable. It is submitted that the site is highly exposed and could not be established successfully and that the proposed trees species are not suitable to the lands. It is submitted that existing trees in the area do not reflect those proposed and cannot be taken as an indication of site suitability. It is submitted that the other forests referred to by the Appellant are not contiguous to the proposal and there is no evidence that conditions are similar and the species proposed are different. It is submitted that the landscape is of a sensitive nature and that the proposal would have a significant adverse impact on the landscape and local amenity. The submission further states that consideration of the proposal in relation to the requirements of the Habitats and EIA Directives as the proposal was refused before these were completed.

Considerations of the FAC

The FAC noted that a number of reasons provided for the refusal related to grant aid schemes offered by the DAFM. The Agriculture Appeals Act 2001, provides for a system of appeals for people dissatisfied with decisions of the Minister for Agriculture, Food and the Marine under Section 7 of the Forestry Act 2014, excluding grant aid, and the Forestry Regulations 2017. In responding to the appeal, the DAFM submitted that,

The DAFM has to be prudent when allocating public money to ensure that the portion of the public purse is prioritised for afforestation projects with a high degree of certainty for successful establishment.

And this reflects some of the reasons provided for the refusal. The FAC is satisfied that relying on potential future grant aid provision by the DAFM to restrict activities under the licencing provisions of the Forestry Act 2014 and Forestry Regulations 2017 represents a serious error in the making of the decision. The FAC therefore considers that the decision should be remitted to the Minister for Agriculture, Food and the Marine to make a new decision on the application in line with the provisions of the Forestry Act 2014 and Forestry Regulations 2017.

In relation to the identification of areas considered unplantable after the licence has been issued the FAC considers that such actions can be an inevitable part of standard operations. The FAC does not consider that the failure to plant a small portion of the proposal lands could be considered as having a significant material impact on the scale, nature and location of such a proposal. In particular, the overall boundary and nature of the proposal is clearly defined in the application and would not be substantially impacted by the exclusion of any areas. In addition, the standard requirements of the DAFM in relation to setbacks and other matters as laid out in the Environmental Requirements for Afforestation (DAFM, 2016) could not be circumvented by this action. In addition and in considering the comparison submitted by the DAFM, the proposal is not associated with substantial engineering operations, such as

deep excavation or the importation of stone or concrete, and any unplanted areas would not have potential impacts on noise or light in relation to dwellings in this location. Furthermore, should the DAFM have considered this or specific information on other operations as essential to the processing of the application they could have requested further information from the Applicant as the matter was brought to their attention at the application stage. However, the Forestry Standards Manual (2015) do state that unplanted areas should be identified on the Biomap and the Appellant should have addressed this in the mapping submitted. The Appellant submitted a new biomap outlining two relatively small areas identified to remain unplanted and as open space. The DAFM did not comment on the accuracy of these areas but they would not represent 25% of the total area.

The Appellant submitted a number of photos of soil pits dug on the land and their location was presented on an aerial image of the site. While the DAFM questioned the representativeness of the samples undertaken they provided no evidence of soil samples or soil depth being measured during the inspection of the lands. The photos appear to suggest a podzolised mineral soil which varies somewhat in its structure with the western lands appearing poorer. This corresponds to the historic Ordnance Survey mapping of the lands which classify the western portion as rough pasture and furze with outcropping rock while the eastern portion is classified as rough pasture, pasture and furze. The Appellant suggested that the eastern portion had been employed in potato production in the past and the images of the lands appear to corroborate this. The photos also appear to show an existing vegetation on the lands which would not be associated with very low fertility, while the species cannot be identified from the photos parts of the lands can be seen to have grasses, bramble, furze, bracken and bluebell. The proposal includes a 20% component of other broadleaves which could be specified by the DAFM to reflect the native species already present. As submitted by the Appellant, the proposal is not for a commercial plantation but a mixed species, native woodland. The lands appear exposed being southerly facing and c.1.2km from the coast. The FAC agrees with the DAFM that the proposal is not likely to produce commercial size timber but it does not consider that it is reasonable to restrict the land owner's activities as a result of this in itself, particularly where the nature and design of the proposal would not suggest a commercial motive, a matter which the Appellant has also made clear. The proposal would appear likely to result in a mosaic of scrub forest and high trees of native species and open space across the lands in question. Based on the information before it the FAC considers that this would be likely to provide greater biodiversity benefits than the current agricultural use in addition to reducing inputs to that land, decreasing emissions and increasing removals of greenhouse gases matters which are in keeping with DAFM and Government policy. The FAC therefore considers an error to have been made in the making of the decision in this regard.

In regards to the potential impact on the landscape, in replying to the appeal the DAFM made reference to the County Development Plan (CDP). The CDP classifies the area as Zone 1 (*To preserve and protect the natural unspoilt physical landscapes, relates principally to the high mountainous areas of Cooley, Feede, and Ravensdale*) for which the following policies are stated, *RD 31 To permit only very limited development appropriate to these sensitive landscapes. This would include limited one off housing* active recreational amenities such as pedestrian and cycle paths, equestrian trails, ecological corridors, small scale ancillary recreational facilities, agriculture and related*

activities. Certain unique, location tied or resource based developments and renewable energy schemes will be open to consideration. Such development will only be considered where it does not adversely impact on the conservation objectives of the Natura 2000 sites.

RD 32 Development of a commercial, industrial or other similar nature will not be considered appropriate.

The lands are not within or adjacent to any Natura 2000 site but a full consideration of this matter would be required were consent to be granted. Neither the County Council or An Taisce replied to the referral that was made. The proposal would occur on land which has already been enclosed for agriculture and lies at the transition between agriculture and unenclosed, open steep land. Agricultural land lies to the south and dwellings are situated to the east and west at a similar prominence but at a remove from the proposal lands themselves. The Minister for Agriculture, Food and the Marine is the competent national authority for afforestation licences and the Forestry Standards Manual (2015) advises that applications should consider the CDP. In this instance the application is for a mixed, species native woodland on 3.1 ha. The FAC does not consider that such a project would be automatically restricted by the policy and provisions as stated in the CDP. There appears to be no evidence that the proposal would impede a particular designated view and is to the north of a private right of way which is said to be used for recreation. To the north of the proposal the lands rise steeply and the proposal would not be appear likely to interrupt the skyline or any long views of the wider landscape. While the northern section of the lands may be visible at a considerable distance from a number of dwellings and the public road the FAC does not consider that the such a proposal planted on enclosed agricultural land in this location would be considered to have an adverse impact on amenity. The FAC did not consider that a small scale mixed species native woodland planted on agricultural land in this location could be considered to have a significant adverse impact on the landscape. The FAC therefore considers an error to have been made in the making of the decision in this regard.

In relation to more general environmental considerations which are stated as reasons but not elaborated on. The lands have been enclosed for a considerable time as noted on historic mapping of the area and described as enclosed agricultural land which corresponds with the photos provided and aerial imagery but appear to be marginal. There is no evidence of protected species or habitats on the site and the lands lie outside of and at a remove from any European site or other designated conservation area. The lands lie in the Big(Louth) 010 sub-compartment of the Newry, Fane, Glyde and Dee Catchment and in the Rockmarshall 10 river sub-basin but there are no marked watercourses/waterbodies on the land. A relevant watercourse is marked as crossing the land and continues southerly and based on historic mapping likely dispersing across agricultural land and ultimately drains into the sea after c.1km without meeting an EPA recorded waterbody. The FAC does not consider that the information before it suggests other likely significant effects on the environment arising from the proposal.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal, and other submissions received. As outlined in this latter, the FAC is satisfied that serious and

significant errors were made in making the decision. In line with Article 14B of the Agriculture Appeals Act 2001, as amended, the FAC is, therefore, setting aside the decision of the Minister and remitting it for a new consideration of the application following the requirements of the Forestry Act 2014 and Forestry Regulations 2017 and addressing the matters identified in this letter.

Yours sincerely,

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

Vincent Upton, On Behalf of the Forestry Appeals Committee