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15th September 2021

Subject: Appeal FAC 055/2021 relating to Licence CN85697

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 (as amended) has now completed an examination of the facts and evidence provided by all parties to the appeal.

Licence.

The licence is for 22.86 Ha of afforestation of 85% Sitka spruce and 15% broadleaves, with areas of open space retained, at Mullaghmore & Gortahork, Co. Leitrim. The application was submitted to the DAFM on the 04/02/2020. Two third-party submissions were received on the licence application. The Department of Agriculture, Food and the Marine (DAFM) approved the licence on the 17/02/2021 with a number of conditions, including specific archaeological conditions.

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

Forestry Appeals Committee.

The appeal was considered by FAC Members: Mr. Donal Maguire (Deputy Chairperson), Mr. Derek Daly and Mr. Iain Douglas on 28/08/2021. At the sitting of the FAC it had before it the full DAFM record of the decision, the notice and grounds of appeal and a Statement of Fact (SoF) provided by the DAFM.

Decision.

Having regard to the evidence before it, in particular the record of the decision by the DAFM, the notice and grounds of appeal, the SoF from the DAFM and the considerations set out hereunder, the FAC has decided that the decision of the Minister licence reference CN85697 should be set aside and remitted to the Minister to request from the DAFM a new screening for Appropriate Assessment with particular reference to Lough Gill SAC (Site Code 001976).

Background.

The SoF provided by the DAFM dated 25/05/2021 indicates that a both a desk and field inspection were carried out on the proposed afforestation. The final Inspector's Certification Report (with a spatial run dated 16/02/2021) describes the soil type underlying the project area as predominantly podzolic in nature, with a predominantly flat to moderate (<15%) slope and that the project area is crossed by/adjoins an aquatic zone(s). The vegetation type(s) within the project area comprise grass/rush.

The report notes that there are 5 Natura 2000 sites within 15Km of the proposed afforestation, Boleybrack Mountain SAC (site Code 002032), the Cuilcagh-Anierin Uplands SAC (Site Code 000584), Arroo Mountain SAC (Site Code 001403), Lough Gill SAC Site Code 001976), Ben Bulbin, Gleniff And Glenade Complex SAC (Site Code 000623) and records an Appropriate Assessment (AA) screening decision to screen out the application on the basis that the location of the project area is within a separate water body catchment to that containing the Natura various sites, with no upstream connection, and a subsequent lack of any hydrological connection.

The report is accompanied by an in-combination assessment carried out by the DAFM that concludes that the project, when considered in combination with other plans and projects, would not give rise to the possibility of a direct or indirect effect on the integrity of any Natura 2000 site in view of those sites' conservation objectives.

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

The licence application was referred to Leitrim County Council, An Taisce and the Archaeology Section of the Forest Service. Leitrim County Council replied on 19/03/2020 stating that it had no objection to the proposal and set out 3 conditions relating to public roads, contact details of the contractor and compliance with the DAFM Guidelines particularly those dealing with water quality. An Taisce replied on 09/03/2020 indicating concerns about water quality and requesting a 20 m setback from watercourses and that 10-15% ABE planting is required by the DAFM Guidelines while it calculates only 8% is proposed. The report of the Archaeology Section of the Forest Service was agreed by the National Monuments Service on 06/11/2020, the report contains a number of conditions which were incorporated into the licence.

Appeal.

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

1. Site is located in a referral zone for the NPWS and there was a failure to refer the licence application to the NPWS, furthermore the area is important for the Hen Harrier, a protected species.
2. The Appropriate Assessment is flawed as the site is hydrologically connected to Lough Gill SAC via the Cashel Stream and the River Bonet contrary to the Forest Inspector's certification.
3. Appropriate Assessment is required as the site is within the Zone of Influence of sites designated under European Law.
4. The Environmental Protection Agency should have been consulted as the proposal could have a negative impact on Lough Gill which is the water supply for Sligo Town and areas of N. Leitrim and has Poor status. The Water Framework Directive requires waters to achieve Good status by 2021 and water quality status should not deteriorate.
5. There is no road access to Plot 6, the Right of Way is not registered and local farmers would dispute vehicular access.
6. Social & Economic benefits to local community of agriculture outweighs the negative impact of afforestation.
7. The lands subject of the licence application would be considered as High Nature Value lands.

8. The cumulative Impact of this licence application should be considered with Licence application CN86305.

Hearing.

At the hearing, the FAC had before it a Statement of Fact (SoF) dated 25/05/2021 confirming the administrative details of licence application CN85697 as outlined above and states that the DAFM is satisfied that all criteria in its standards and procedures had been adhered to in making the decision on this licence application.

The FAC also had before it a SoF by the DAFM Forestry Inspectorate dated 23/3/2021. The Inspector confirmed that the relevant AA procedure in operation at the time was applied, that Standard Operating Procedures were applied, that a field inspection and desk audit was carried out and that all criteria were fully adhered to and that the application should be approved.

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 show the land it is proposed to plant is agricultural grassland. The site is in three parts, Plot 1 north of a county road is bounded by forestry to the east and west and by agricultural grassland to the north and south. Plot 2 to the south of the county road is surrounded by agricultural land. Plot 3 also south of the county road is surrounded by agricultural land except on the southeast boundary where it adjoins forestry.

Soil types on the site identified on the EPA mapping are as Surface water Gleys and Groundwater Gleys, which are generally an acid, deep, poorly drained mineral soils.

The nearest identified waterbody to the site is the Cashel Stream (Bonet)_10 which adjoins Plot 3 on its south-eastern boundary and flows north to south. This waterbody forms the north-western boundary of Plot 4 and western boundary of Plot 5 and is varies between 350m and 500m from the western boundary of Plot 6. The same river waterbody forms the southern boundary of Plot 6.

The Water Framework Directive Assessment of this river waterbody is that it is of Good status 2013-18 and that it is Not at Risk in information provided by the EPA. The site lies in the Sligo Bay & Drowse Catchment and the Bonet_SC_020 sub-catchment.

The underlying Ground Water bodies are the Killarga South IE_WE_G_0056 and Lough Allen Uplands IEGBNI_SH_G_002, both have good status and neither is 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 has confirmed that the Natura sites identified as being within 15km of the site are those contained in the Inspector's Certification.

The FAC noted that DAFM completed and recorded a screening for Appropriate Assessment (AA) that determined that the proposal itself and in-combination with other plans and projects would not impact on a Natura site.

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 land is not within a High Visual Amenity Area or Area of Outstanding Natural Beauty as set out in Leitrim County Development Plan 2015-2021 (CDP) and would not impact on any outstanding views identified in that plan. The area is classified as having a low sensitivity or high capacity to accommodate forestry.

The function of the FAC is to hear and determine appeals from people who are dissatisfied with a decision 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 as it pertains to afforestation, forest road works, tree felling and aerial fertilisation. Matters related to grant aid and the making of policy do not fall within the remit of the FAC.

In addressing the grounds of appeal, the FAC considered the following matters,

Referral to Statutory Bodies.

Grounds 1 and 4 contend that the National Parks & Wildlife Service (NPWS) and the Environmental Protection Agency (EPA) should have been consulted on this licence application. The FAC notes that the DAFM has agreed a referral matrix with NPWS where applications adjoining or upstream of Natura 2000 sites can be assessed for impacts without automatic referral as part of its EIS and AA screening process and that consultation by the Forest Service with prescribed bodies is dependent on the nature, scale and location of the operations proposed and determined on a case by case basis. This is reflected in the Forestry Standards Manual 2015 amongst other DAFM documentation. The FAC is not satisfied that an error was made in this regard.

Appropriate Assessment Screening.

Ground 2 of the appeal contends that an Appropriate Assessment is required because the site is within the Zone of Influence of sites designated under European Law. The FAC takes this to refer to Natura 2000 sites designated under the Habitats and Birds Directives. The FAC notes that the DAFM identified that the proposed afforestation was within the generally accepted 15 km zone of influence of 5 Natura 2000 sites and that an Appropriate Assessment Screening was carried out on those 5 sites which concluded that there was No likelihood of a significant effect on any European site, and Appropriate Assessment not required. In carrying out an Appropriate Assessment Screening for Natura 2000 sites within 15 km of the proposed afforestation prior to making a decision on Appropriate Assessment the DAFM has followed proper procedure and the FAC is not satisfied that an error was made in this regard.

Ground 3 of the appeal, contends that the Appropriate Assessment is flawed as the site is hydrologically connected to Lough Gill SAC via the Cashel Stream and the River Bonet. The FAC notes that the AA Screening contained in the Inspector's Certification states that the reason for the screening out of all of the 5 Natura 2000 sites identified was *"The location of the project area within a separate water body catchment to that containing the Natura site, with no upstream connection, and the subsequent lack of any hydrological connection."* Having examined the EPA mapping the FAC notes that parts of the Boleybrack Mountain SAC, Arroo Mountain SAC and Lough Gill SAC lie within the same WFD Catchment, WFD 35 Sligo Bay as the proposed afforestation, that parts of the Boleybrack Mountain SAC, and Lough

Gill SAC lie within the same WFD SubCatchment, Bonet_SC_020 as the proposed afforestation and that part of the Boleybrack Mountain SAC lies within the same WFD River Sub Basin, the Cashel Stream (Bonet)_10 as the proposed afforestation. The FAC further notes that the un-named stream adjoining Plots 3 and 4 on the biomap submitted is indirectly connected hydrologically to the River Bonet section of Lough Gill SAC via Belhavel Lough and the Cashel Stream, a hydrological distance of c. 9 km. The FAC considers that there are significant errors in the reason for screening out the SACs identified in the AA Screening.

Access.

Ground 5 of the appeal contends that there is no road access to Plot 6, that the Right of Way is not registered and that local farmers would dispute vehicular access. The FAC notes that the applicant's biomap shows an access road running north to south from the public road and that the access road forms part of the western boundary of Plot 6 and that applicant's property extends to the centre of that access road. The FAC further notes that the access road is currently used for agricultural purposes. The licence specifically states that it does not confer title to the ownership of any land specified in the licence and that the authority granted by the licence does not remove the obligation of the licensee to abide by and fulfil the requirements of any other legislation. The appellant has adduced no evidence that there is a dispute about access to the site. The FAC considers that there is no convincing evidence that the DAFM has erred in its consideration on access to the site.

Impact of Forestry.

Ground 6 of the appeal contends that the social and economic benefits to local community of agriculture outweighs the negative impact of afforestation. The FAC notes that the water quality of Belhavel Lough was classified as Poor in the period 2013-2018 and is considered to be At Risk in the WFD 3rd cycle. Agriculture is identified as being the pressure responsible for the Poor status. As previously noted, the making of forest policy is for the Minister for Agriculture, Food and the Marine.

High Nature value Farmland

Ground 7 of the appeal contends that the lands subject of the licence application are considered as High Nature Value lands (HNV). HNV farmland, according to Teagasc 'is typically characterised by low-intensity farming associated with high biodiversity and species of conservation concern'. It is clear from the record that a DAFM inspector did visit the site and did record its characteristics, which did not accord with the Teagasc definition. No evidence was adduced to the contrary and the FAC is not satisfied that the DAFM evaluation of this particular site contained a serious error.

Cumulative Impact

Ground 8 of the appeal contends that the cumulative impact of this licence application should be considered with licence application CN86305. The FAC notes that licence CN86305 is located some 750 m west of this proposed afforestation and was received by DAFM on 14/04/2020 and decided on 17/02/2021. The FAC is not satisfied that this proposal forms part of the same overall development as CN85697 or that there is any evidence of project splitting having been undertaken such that any regulatory requirements might be avoided. However, the FAC notes that the in-combination report of 16/02/2021 lists forestry-related projects in the general vicinity of the project and that CN86305 is not included although projects located at a greater distance and received earlier were included in the in-combination report. The FAC considers the omission of CN86305 from the in-combination assessment a serious error.

Conclusion

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal and Statement of Fact submitted by the DAFM. In accordance with Article 14B of the Agricultural Appeals Act 2001(as amended) the FAC is satisfied that a series of errors was made in the making of the decision regarding licence CN85697 and that the licence should be set aside and remitted to the Minister to DAFM to undertake a new screening for significant effects on European sites of the proposal itself and in combination with other plans and projects in line with Article 6(3) of the EU Habitats Directive and provide reasons for the screening decision.

Yours sincerely,

A large black rectangular redaction box covering the signature of the sender.

Iain Douglas,
On Behalf of the Forestry Appeals Committee