



27th April 2022

Subject: Appeal FAC 151/2021 relating to Licence CN88979

Dear

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 5.04 Ha of GPC 3 afforestation at Cloongee, Co. Mayo. The application was submitted to the DAFM on the 06/02/2021. There were two third party submissions on the licence. The Department of Agriculture, Food and the Marine (DAFM) issued the licence on the 16/12/2021 with a number of conditions, including implementation of mitigation measures set out in the Natura Impact Statement (NIS) and ecology report for the licence, a setback of 60m and the planting of an additional 5 rows of broadleaved trees from dwellings, retention of existing trees/hedgerows, setbacks of 10m from the public road and 5m from relevant watercourses.

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

Forestry Appeals Committee.

The appeal was considered at a non-oral hearing of the FAC held on 20/04/2022. The FAC Members present were: Mr. John Evans (Deputy Chairperson), Mr Vincent Upton and Mr. Iain Douglas. Secretary to the FAC: Mr. Michael Ryan. At the hearing 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 to affirm the decision of the Minister for Agriculture, Food and the Marine to grant licence Reference No. CN88979 at Cloongee, Co. Mayo as issued.

Background.

The SoF provided by the DAFM dated 03/03/2022 indicates that a both a desk and field inspection were carried out on the proposed afforestation, the field inspection took place on 09/09/2021. The final

Inspector's Certification Report (generated 16/12/2021) indicates that; all available environmental datasets have been cross checked, all broadleaved plots meet the minimum width and area criteria, at least 10% of the total conifer area will be a conifer species other than Sitka Spruce/Lodgepole Pine and/or at least 15% of the total area will be comprised of suitable broadleaved species, the species proposed are silviculturally and environmentally are suitable for the site, that the land proposed for afforestation is agricultural land, that the site is suitable for 15% broadleaf afforestation, that the proposed afforestation has taken into account the environmental considerations identified on the ground and that the site is free of shell marl or highly calcareous soils.

The DAFM prepared an Assessment to Determine EIA Requirement on file dated 16/12/2022 which assesses 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.

An in-combination assessment carried out by the DAFM dated 01/12/2021 concludes that *"there is no possibility that the proposed Afforestation project CN88979, with mitigation measures set out in Section 4, will itself, ie. individually, giving rise to an adverse effect on the integrity of the following European Sites and their associated Qualifying Interests / Special Conservation Interests and Conservation Objectives: River Moy SAC (002298). Therefore, there is no potential for the proposed project to contribute to any cumulative adverse effect on the integrity of the above European Site(s), when considered in-combination with other plans and projects."* (Section 4 above refers to the DAFM AA Determination of 08/12/2022)

The DAFM referred the licence application to the National Parks & Wildlife Service on 25/06/2021 which replied on 03/09/2021 that it had no comment to make on the proposal and provided a document with general observations.

There is an undated Pre-Approval Submission Report prepared by the applicant which sets out Application Details, Ownership Details, the Site Details, Silvicultural Conditions, Plot and Species Details, Operational Details, Fencing Details and Environmental Considerations.

The applicant submitted an Appropriate Assessment Pre-screening Report on 05/10/2021 which identified five Natura 2000 sites as being within 15 Km of the proposed planting: Lough Hoe Bog SAC 000633; River Moy SAC 002298; Killala Bay/Moy Estuary SAC 000458; Killala Bay/Moy Estuary SPA 004036; Lough Conn and Lough Cullin SPA 004228.

Lough Hoe Bog SAC was screened out on the basis that the project is located entirely outside the European site which negates risk of direct impacts, there are no downstream hydrological connections to the European site, planting is within a different WFD sub-catchment Moy_SC_060. There are no listed Qualifying Interests (Qis) within the project area. The other four sites were screened in on the basis that there was *"a likelihood of the proposed afforestation project at Cloongee, Co. Mayo, as detailed above and on the accompanying application form, having a significant effect, individually"* on those European Site(s)

On the same date 05/10/2021 the applicant submitted a NIS assessing the four sites screened in by the Appropriate Assessment Pre-screening Report and concludes that *"in light of the above objective scientific information, that, when the above mitigation measure(s) is / are implemented, the project, individually or in combination with other plans and projects, will not have an adverse effect on the integrity of any of the*

European Sites listed in Section 2 above, in view of their conservation objectives and in view of best scientific knowledge”.

The DAFM, as the competent authority, carried out an AA Screening Determination on three sites Lough Hoe Bog SAC; River Moy SAC; Lough Conn and Lough Cullin SPA dated 08/12/2021. The sites were identified initially in the District Inspector’s Appropriate Assessment Screening Report which screened out Lough Hoe Bog SAC and screened in River Moy SAC; Lough Conn and Lough Cullin SPA. The DAFM ecologist screened out both Lough Hoe Bog SAC and Lough Conn and Lough Cullin SPA in the AA Screening Determination.

The DAFM carried out an AA Determination (AAD) dated 08/12/2022 which identified a series of mitigation measures designed to ensure that, if carried out, that there is no possibility that the proposed afforestation, would itself, ie. individually, give rise to an adverse effect on the integrity of the River Moy SAC or its QIs. And that there is no potential for the proposed planting to contribute to any cumulative adverse effect on the integrity of the above European Site(s), when considered in-combination with other plans and projects.

The DAFM also prepared an ecology report on the carried out a report dated 08/12/2021 on the mitigation of any impact the proposed afforestation may have on badgers, the presence of which were identified in the applicant’s NIS.

Compliance with the mitigation measures contained in the AAD and Ecology Report is included in Condition 5 of the Afforestation Licence.

Appeal.

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

1. Fire Safety concerns. The proposed afforestation will create a further fire hazard in addition to the existing forestry in the vicinity of the appellants’ dwelling.
2. The proposed afforestation will restrict daylight and views from the appellants’ dwelling.
3. There is an alternative solution. Part exchange of the applicants’ land with lands adjoining the proposed afforestation to the south, to which the landowner of those lands is agreeable.

DAFM Statement of Fact.

The FAC had before it a Statement of Fact (SoF) provided by DAFM dated 03/03/2022. This included confirmation of the administrative details of licence application CN88979 as outlined above and stated that the DAFM was satisfied that all criteria in its standards and procedures had been adhered to in making the decision on this licence application. The SoF also included a contribution from the DAFM Forestry Inspectorate dated 18/02/2021 which submitted that the relevant AA procedure in operation at the time was applied, that Standard Operating Procedures were applied and addressed the grounds of appeal.

Consideration by the FAC.

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

The application describes the lands as enclosed, agricultural land on a mineral, peat soil and with a grass, grass/rush vegetation cover. Aerial photography including that submitted with the application show the land that it is proposed to plant is agricultural grassland. The site is in one plot and is bounded on the eastern site boundary and partially on the northern site boundary by existing forestry, a public road lies to the west and the remaining border is bounded by improved agricultural grassland.

Soil types on the site, identified through EPA mapping, are Surface water Gleys, Groundwater Gleys and Basin Peats.

The site lies within the Moy & Killala Bay WFD Catchment and the Moy_SC_060 Sub catchment.

EPA mapping shows that the nearest identified waterbody to the site is the Moy_100 circa 250m east of the proposed planting. In 2013-2018 this waterbody was classified as Good Status and is not at risk.

The site drains to the drains into the Moy SAC (002298) some 2.1km surface water distance to the north via the Moy_100 watercourse. Within the site there are overgrown agricultural drains with little water movement running along field boundaries towards a road drain to the north-east.

The underlying Groundwater body is Foxford IE_WE_G_ 0034 which was classified as having Good Status in the period 2013-2018 and 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 has confirmed that the four sites screened in in the applicant's AA Pre-screening Report the only sites within a 15Km threshold distance for impacts to terrestrial habitats. The Lough Hoe Bog SAC screened out as it is more than 15KM from the proposed afforestation

The FAC noted that DAFM completed and recorded an AAD that determined that the proposal itself (providing the mitigation measures identified in Section 4 of that AAD were implemented in full) and in-combination with other plans and projects would not result in any significant effects on a Natura 2000 site.

The FAC noted that the DAFM recorded, in its Assessment to Determine EIA Requirement, 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 of the proposed afforestation is located within in Landscape Policy Area 3A of the Landscape Appraisal of County Mayo, part of Mayo County Development Plan 2014-2020 where forestry has high potential to impact on the existing landscape character. However, the detailed policies for Landscape Policy Area 3A refer to the protection of vistas to Loughs Conn & Cullin and that development proposals should not diminish visual amenity impact due to inappropriate location or scale. Having to the fact that the proposed planting is not in a vista to Loughs Conn & Cullin, the location of the proposed afforestation adjoining existing forest planting, the nature of the proposal including setbacks and planting, and the character of the landscape in the vicinity the FAC does not consider the proposed afforestation will have an adverse impact on the landscape.

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

Fire Safety.

The FAC noted the requirements set out in the Environmental Requirements for Afforestation 2017 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 5 of the licence mandates compliance with the Environmental Requirements for Afforestation and Forestry Standards Manual amongst others and that the 60m setback is further enhanced by the planting of five rows of broadleaved trees. The FAC also noted that the site was inspected on the ground and that the DAFM found that the site itself and surrounding lands are currently in agricultural pasture and that the existing forestry in the area is not contiguous to any extensive area of unenclosed land and is also surrounded mainly by agricultural land. It is acknowledged that forest fires by and large spread from adjoining lands into forest lands, therefore given the absence of significant areas of extensively managed lands containing flammable vegetation such as purple moor grass, furze and heather contiguous to the existing forestry and the fact that the current vegetation type and land management in the area is not conducive to the initiation or spread of fire, and the unplanted setbacks and conditions of the licence, 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.

Impact on Daylight & Views.

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 5 of the licence mandates compliance with the Environmental Requirements for Afforestation and Forestry Standards Manual amongst others and that the 60m setback is further enhanced by the planting of five rows of broadleaved trees.

The FAC also noted that the site was inspected on the ground and that the DAFM found that the appellant's dwelling is elevated above the site of the proposed forestry which slopes away eastwards from the dwelling. The difference in elevation is approximately 5m from floor level of the dwelling to the flat area of the application site. This easterly facing slope running away from the public road, which is the only common boundary with the dwelling, is the location of the setback from the dwelling of 60m plus the five rows of broadleaved planting. The FAC further noted that the DFAM found that the front of the dwelling faces north with the eastern gable wall facing the proposed planting having 2 windows, one at ground floor level one at first floor level. The DAFM considered, in the light of the above, that there would not be a significant, if any, loss of natural light to the dwelling and for the same reasons, that there would be no significant impact on views from the dwelling. The forest lies to the east of the dwelling and across a public road and setbacks are required from the public road and the dwelling, in addition to the stated broadleaf planting. The FAC was not satisfied that an error was made on this matter.

Alternative Solution.

The appellant contends that there is an alternative solution; that the land adjoining the proposed planting to the south be exchanged for part of the application site and that the landowner of the land is amenable to such part exchange. There is no evidence before the FAC supporting this contention and in this regard this aspect of the matter does not fall within the remit of the FAC itself to determine and is not satisfied that an error occurred in the making of the decision in this regard.

Conclusion.

In considering the appeal, the FAC had regard to the record of the decision and the submitted grounds of appeal. The FAC is not satisfied that a serious or significant error or series of errors was made in the making of 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 CN88979 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,

Iain Douglas,
On Behalf of the Forestry Appeals Committee