



An Coiste um Achomhairc
Foraoiseachta

Forestry Appeals Committee

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29th January 2021

Subject: Appeals FAC128/2019 & FAC155/2019 in relation to afforestation licence CN81895

Dear [REDACTED]

I refer to the appeals to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine (DAFM) in respect of afforestation licence CN81895, granted on the 26th July 2018. The FAC, established in accordance with Section 14 A (1) of the Agriculture Appeals Act 2001, has now completed an examination of the facts and evidence provided by the parties to the appeal.

Hearing

An oral hearing of appeal 128/2019 and 155/2019 against CN81895 was conducted by the FAC on the 5th January 2021.

Attendees:

FAC:	Mr Des Johnson (Chairperson), Mr Pat Coman, Ms Paula Lynch & Mr Luke Sweetman
Secretary to the FAC:	Mr Michael Ryan
Appellant:	[REDACTED]
Applicant's representative:	[REDACTED]
DAFM representatives:	Ms Mary Coogan & Mr David Ryan

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Decision

The FAC considered all of the documentation on the file, including application details, processing of the application by the DAFM, the grounds of appeal, submissions made at the Oral Hearing and all other submissions, before deciding to set aside and remit the decision to grant this licence (CN81895). The licence is for the afforestation of 10.14ha at Clooncalgy More, Co. Roscommon and involves a change of land use from agriculture to forestry. The application is split between a northern and southern section (separated by agricultural land) with three plots of GPC3 (85% Sitka spruce, 15% Additional Broadleaves) totalling 9.5ha and two unplanted "Bio" plots totalling 0.64ha. As per the DAFM information the proposed project site is on enclosed land currently under Grass/Rush and described as exposed/moderately exposed at 30-50m elevation with a westerly aspect. The soil type is predominantly Podzols/Brown Podzolics. The slope is predominantly flat to moderate (<15%), the site is crossed by a mapped drain and is not prone to flooding. Road access is provided. Ground preparation will consist of woody weed removal and installing mound drains. 500m of stock fence will be erected. Slit planting and herbicide vegetation control in years 0-3 are planned. Clooncalgy Lough is c.60m east of the proposal. The project site is in the Upper Shannon Catchment and the Suck_SC_020 Sub-Catchment, in the Island_020 Waterbody.

Following a desk and field assessment, the licence was granted on the 1st May 2019 with standard conditions plus additional conditions requiring adherence to the Environmental Requirements for Afforestation (DAFM, 2016) and the specific archaeological conditions attached, and stating that "all guidelines to apply". The application was not referred to any prescribed bodies for consultation but was referred to a DAFM Archaeologist. The DAFM Archaeologist noted the presence of an historic farmstead and laneway in the northern group of plots and that a portion of the proposed development adjoins the wetlands surrounding Clooncalgy Lough, on which is a Crannóg (RO-025-026). The specific archaeological conditions included on the licence are as follows:

- A 10m unplanted buffer zone/setback to be established around any upstanding historic farm buildings and a 5m unplanted buffer zone/setback around attached infields and access lane.
- A structured programme of archaeological monitoring by a suitably qualified Archaeologist engaged by and retained at the licence holder's own expense (or that of his/her Registered Forester) will also be necessary for all ground preparation and drainage works undertaken in the two eastern most fields highlighted in Pink on the accompanying map.

The FAC noted that further conditions recommended in the DAFM Archaeologist's report relating to corresponding with the National Monuments Service, notifying relevant authorities in certain



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circumstances, and reporting on the results of the archaeological monitoring were not transposed onto the licence.

In assessing the application, the DAFM carried out a Stage 1 Appropriate Assessment (AA) screening which identified one Natura 2000 site within 3km of the project site; Coolcam Turlough SAC. This site was screened out due to 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 pathway.

The FAC sought additional information from the DAFM in relation to CN81895, querying if i) consideration had been given to potential mitigation measures to protect the environment during the AA screening and ii) whether the proposed project's contribution to in-combination effects had been assessed. The DAFM responded that the standards of good forestry practice prescribed were not to mitigate effects on any Natura site, and an in-combination assessment was completed on the 13th March 2020. The DAFM stated they assessed other plans and projects within the general vicinity of the proposed development after consulting the following sources; Roscommon County Development Plan 2014 – 2020, the Roscommon County Council website, the Environmental Protection Agency website, An Bord Pleanála's website and DAFM's iFORIS MapViewer. The DAFM deemed that there is no potential for the project to contribute to any effects, when considered in-combination with other plans and projects. The DAFM stated that although the AA screening process at the time of licence approval used a 3km radius, their current AA screening process, which considers Natura sites within 15km of the application site, would not have screened in any Natura sites for AA.

There are two appeals against the decision to grant the licence. In summary, the grounds of appeal submitted by the first Appellant state that they recently inherited a house adjacent to the northern boundary of the northern group of plots that they plan to live in and that the proposed development will have serious implications on the property and their quality of life. The following issues were raised in this Appellant's written grounds of appeal; light deprivation, impact on the value of the property, financial depreciation of planned renovations and development of the property, the Appellant's intention to live and work from the dwelling in the future being disadvantaged, effect on broadband signal preventing the ability to work from home, security of the property; making it more

vulnerable, unable to locate the notice of application on the DAFM website, Badger issues in relation to the dwelling and nearby farms (where there are already high levels of TB reports in livestock) and the financial consequences suffered by these farmers, Increase in other animals who would inhabit for hunting purposes, environmental impact of phosphorus and nitrogen fertilisers, pesticide use and its effect on Bee and other insect populations, no evidence of planned erection of livestock proof fences around the forestry site, no evidence of planned erection of badger gate fences. The second Appellant contends that there is limited good land in the area and is seeking a 10m unplanted setback along the boundary where the project site adjoins the Appellant's land.

The DAFM responded to the first Appellant as follows; mandatory 60m unplanted house setback applies and 5 rows of broadleaves apply. Designed to prevent encroachment, isolation and blocking of light / curtailment of views. Provision of broadband connection is a matter for the service provider. Badgers are a protected species – Wildlife Act. 500m of stock fencing is proposed which will not restrict the movement of badgers. All fertiliser and herbicides must be used in accordance with Environmental Requirements for Afforestation. Single application of 250kg GRP proposed is only fertiliser. No pesticide application envisaged. Mounding will reduce need for herbicide – spot applications may be necessary before year 4 – no further herbicide use thereafter. In response to the second appeal the DAFM stated the following; the appellant requested a 10m set back from the hedgerow along northern boundary of plot 215, request was made 16 May 2019 – after licence had issued. Considers the request fair and reasonable and the licence should be revised to include a condition requiring the Licensee to maintain a 10m setback from the hedgerow along the northern boundary (for a distance of 210m) along the northern boundary of plot 1 (215).

The FAC held an Oral hearing on the 5th January 2021. The parties were invited to attend in person or to join electronically. The FAC sat in person at this hearing. The Appellants, the DAFM and the Applicant's Representative (AR) participated electronically. The DAFM detailed their approach to processing and issuing the licence. The DAFM stated that the proposed development was not in a fisheries sensitive area and the application had not been referred to Inland Fisheries Ireland (IFI), the County Council had not been referred in this instance and, due to the location of the only relevant Natura 2000 site within a different catchment, the National Parks & Wildlife Service (NPWS) had not been consulted. The DAFM contended that notice of the application was posted on their website on the 1st August 2018, the first site notice had been erected in July 2018 and the second site notice in January 2019. Four submissions had been received regarding CN81895 prior to the decision to grant the licence. The application had been field and desk assessed. Following a field assessment the District Inspector (DI) made further information requests relating to the lack of a site notice and



stating that a Land Types Assessment was required for a peaty section ground applied for in the east of the project site. The DI stated that, following a walk-through of the site with the Registered Forester, a “buffer” of mineral soil adjoining this peaty section was identified and included in the application and therefore a Land Types Assessment was not required for the excluded peaty section. The AR stated that a site notice which he had erected had been removed unbeknownst to him and that a replacement site notice was erected straight away upon notification from the DI. The first Appellant stated that he had inherited the adjoining property from his parents and, at the time, was unable to locate the notice of the application on the DAFM website. He stated that the proposed development would devalue his property. The FAC queried was there any evidence to support this claim e.g. had an evaluation been carried out? The Appellant did not provide any specific evidence in this regard. The first Appellant stated that the broadband signal to his property would be compromised if the planned project goes ahead. Under questioning by the FAC, the Appellant did not provide specific research to support this contention but did state that he had done some online research into the issue. In response to the second Appellant’s request, the AR stated that he had offered to include additional planting setback where the project site borders the Appellant’s land. Responding to a query from the FAC regarding planned chemical inputs for this proposed project, the AR stated that the site is quite fertile and that it would be possible establish the trees without fertiliser. He stated that fertiliser application had been applied for but it would only be needed in the event of frost damage impacting the establishment of the trees on-site. The AR indicated that one application of ‘spot-sprayed’ herbicide was planned and that the site would be assessed throughout the first 4 years prior to additional spraying. When queried by the FAC, the second Appellant confirmed that his issue of concern had been satisfied by the DI’s recommendation of an additional 10m unplanted setback along the project site’s boundary with his land.

The first Appellant confirmed the location of his property as adjacent to the northern boundary of the northern group of plots on the application map. The AR confirmed that a 60m setback would be maintained from this property, as per DAFM requirements. He stated that, as per DAFM guidelines, this area was not mapped as a Bio plot as it is less than 0.2ha. The DI confirmed that, as per the DAFM’s procedure at the time of approval, only one Natura 2000 site was screened for AA. The FAC noted that there are 17 Natura 2000 sites within a 15km radius of the project site. The DI stated that all of these Natura sites would be screened out under the current AA screening procedure as the majority of their qualifying interests are aquatic in nature and none of the sites have a hydrological connection to the proposed development.

The first Appellant raised a query about the ownership of a dwelling which is located along the centre of the northern boundary of the northern group of plots. The AR stated that the information on www.landdirect.ie indicated this dwelling is part of the same portfolio as the project lands.

An issue arose where the original licence issued by the DAFM had not been provided with the documentary evidence to the FAC prior to the oral hearing. This licence was subsequently sought from, and provided by, the DAFM to the FAC. The FAC circulated the licence to the Appellants on the 6th January 2021 and invited them to make a submission on or before the 20th January 2021. The first Appellant responded on the 20th January 2021 stating that his concerns regarding the fencing of the project lands had not been addressed. He also further queried the ownership of the dwelling which had been discussed at the oral hearing. The Appellant did not provide any specific evidence as to the ownership of the property. The FAC note that the granting of an afforestation licence does not exempt the holder from meeting any legal requirements set out in any other statute.

In addressing the grounds of appeal, the FAC considered the first Appellant's grounds of appeal relating to the alleged impact of the proposed development on his property. In regards to light deprivation, the FAC noted the DAFM requirements for a 60m setback from the Appellant's dwelling. It is the opinion of the FAC that this requirement is sufficient to prevent the planned project from depriving the Appellant's dwelling of light. The FAC had regard to the Appellant's contention that the proposed development would negatively impact the value of his property, including financial depreciation of planned renovation and development of the property. The FAC noted that the Appellant did not provide any specific evidence in this regard. The FAC considers that the Applicant has a right to develop their own land as they see fit, in line with good forestry practice and in compliance with the relevant statutory and regulatory requirements. The FAC considered the Appellant's statement regarding broadband signal. The FAC notes that there are many parts of rural Ireland where accessing adequate broadband signal can be problematic. The Appellant did not provide any specific information relating to the proposed development's potential to impact on his property's broadband signal. As such, there is no convincing evidence before the FAC to support the Appellant's contention. The FAC concluded that the provision of broadband services is an issue for the Appellant's service provider. The FAC was mindful of the Appellant's concerns relating to security and the perceived increased vulnerability of their property. The FAC noted that the dwelling in question is surrounded on all sides by agricultural land. On balance, the FAC is of the opinion that the proposed development will not lead to the Appellant's dwelling becoming isolated and/or more vulnerable. The FAC considered the Appellant's statement that he was unable to locate the notice of



application on the DAFM website. The FAC noted the DAFM's statement that the notice was published to the DAFM website on the 1st August 2018. The FAC considered the verbal evidence that a site notice of application was erected at the proposed site in July 2018. The FAC also noted that four submissions were made to the DAFM regarding the licence application. In the circumstances, the FAC is satisfied that there was sufficient notice of the application provided by the DAFM. The FAC had regard to the Appellant's grounds relating to Badgers and other animals that may be attracted to the habitat to be created within the project lands. The FAC is cognisant that the proposed change of land use type from agriculture to forestry may eventually result in the presence of a variety of associated fauna but does not consider this will have a negative effect on surrounding agricultural lands. The FAC considered the grounds relating to the use of fertiliser and pesticides on site. The FAC noted the AR's statement during the oral hearing that fertiliser was not likely to be required and that minimal amounts of herbicide would be used, if needed. The FAC observed the use of plant protection products in Ireland is governed by SI 155 of 2012 and SI 159 of 2012, which are based on and give effect to EU Directive 2009/128/EC (concerning the sustainable use of pesticides) and Regulation (EC) No. 1107/2009 (concerning the placing of plant protection products on the market). Users of plant protection products shall apply the principles of good plant protection practice, as provided for in SI 155 of 2012. On balance, the FAC concluded that, if needed, the chemical inputs for this site would be unlikely to have a deleterious effect on the environment. The first Appellant contended that there was no evidence of livestock fences around the project site or of the planned erection of Badger gate fences. The FAC noted the inclusion of 500m of stock fencing is applied for and does not consider that this will disrupt the movement of Badgers in the area.

The FAC notes that both the DAFM and the AR stated that they would be willing to accommodate a 10m unplanted buffer along the project site's boundary with the second Appellant, and that this Appellant was satisfied that his issue had been resolved during the oral hearing. Notwithstanding the DAFM's procedures in place during the processing of this licence application (which stipulated a 3km radius for AA screening), the FAC considers the DAFM's failure to complete an AA screening of the Natura sites within a 15km radius of the project site, prior to making their decision to grant this licence (CN81895), a significant error. The FAC also concludes that the DAFM's lack of consideration for the possible in-combination effects of the proposed development on Natura sites prior to granting the licence as a significant error. In these circumstances, the FAC concludes that the decision should be set aside and remitted to the Minister to carry out a new AA screening of the proposed development regards Natura 2000 sites within a 15km radius, on its own and in

combination with other plans and projects, and resulting from the screening conclusion, an appropriate assessment if necessary, before making a new decision in respect of the licence. Furthermore, the FAC recommends that the DAFM consider the potential resolution of the second Appellant's submission and the inclusion of the full archaeological conditions contained in the DAFM Archaeologist's report when deciding on additional conditions to be inserted in the event of any new licence being issued.

Yours sincerely,



Luke Sweetman on behalf of the Forestry Appeals Committee