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30th March 2021

Subject: Appeal FAC094/2020 regarding licence CN84493

Dear [REDACTED]

I refer to your 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 has now completed an examination of the facts and evidence provided by all parties to the appeal.

Background

Licence CN84493 for afforestation of 13.77 ha at Glynn, Co. Cork was approved by the Department of Agriculture, Food and the Marine (DAFM) on 18th February 2020 with conditions.

Hearing

A hearing of appeal FAC094/2020 was held by the FAC on 26th March 2021. In attendance:

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

Secretary to the FAC: Ms. Marie Dobbyn

Appellant: Not present

Applicant: Not present

DAFM Representatives: Ms. Mary Coogan, Mr. Ken Bucke, Mr. Brian Mahoney

Decision

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notice of appeal, submissions made including those at the oral hearing, and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister regarding licence CN84493.

The licence pertains to 13.77 ha of afforestation at Glynn, Co. Cork. The application included a description of the proposal and maps that identified the boundary of the proposal, aquatic features, access to the lands, recorded monuments, hedgerows and other features. The land is described as enclosed, agricultural land on a mineral soil with a neutral aspect. The current vegetation is described as grass rush, bracken/briar, furze, scrub/laurel/rhododendron. The proposal includes 1,050 metres of

sheep fencing and would involve the planting of 8.66 ha with Sitka spruce and broadleaves and 5.11 ha of native woodland comprised of alder, birch, pedunculate oak and broadleaves planted in groups. Ground preparation would be through mounding with angel notch planting. No fertiliser use is proposed and weed control would be through herbicide use in years 0-2 and through manual controls. A photo of a site notice in place was submitted to the DAFM. Two submissions from members of the public were made on the application. The DAFM undertook and documented an Appropriate Assessment screening and identified one European site within 15km and concluded that there was no reason to extend the radius in this case. This site is the Blackwater River (Cork/Waterford) SAC (002170). An Appropriate Assessment Report and Determination with specific mitigation measures was prepared in relation to Blackwater River (Cork/Waterford) SAC. While no recorded monuments are present on site a number of fulacht fia are present to the north of the site boundary. The application was not referred to any external referral bodies but was referred to the DAFM Archaeologist who attached conditions for setbacks from a historic farmyard and infields and archaeological monitoring. The approval was issued on 18th February 2020 with specific conditions related to the archaeological report and the Appropriate Assessment.

There is one appeal against the decision. The grounds submit that the Appropriate Assessment screening does not comply with the requirements of the law. The grounds submit that the Inspector had stated that an Appropriate Assessment was required in relation to the Blackwater River SAC and question how the application was approved. The grounds go on to submit information regarding obligations on public authorities including a document attributed to the Department of Culture, Heritage and the Gaeltacht. The grounds submit that it is necessary to state which catchment the development is in and to show evidence that there is no groundwater connectivity to a Turlough.

In a statement to the FAC, the DAFM submitted that it is satisfied that their standards and procedures were adhered to in making the decision. The statement outlines the processing of the file including the preparation of an Appropriate Assessment following a screening decision and that the site was desk and field inspected.

An oral hearing of the appeal was requested by the Appellant and held on 26th March 2021 and all parties were notified. Representatives of the DAFM attended. During the oral hearing the DAFM again provided an overview of their processing of the application. They submitted that the site had a number of drains that lead to a stream at the southern border that flows to the Blackwater River SAC and that it was determined, on this basis, that the application should proceed to Appropriate Assessment (AA). The FAC queried the recording on the Inspectors Certification that the application should not proceed to AA and it was submitted that this was a technical error in the online system employed but an email was retained outlining this technical issue and it was noted that the AA includes the original screening form in an Appendix. It was submitted that the site had been inspected three times, twice by the District Inspector and once during the preparation of the AA. It was submitted that referral to a prescribed body was discretionary in this situation but that information on the location of Freshwater Pearl Mussel is supplied by the NPWS to the DAFM and that it was employed in processing the application and that there are no populations in this vicinity. The AA and mitigation measures were described which focused

on closing any potential pathways to the watercourse and operational setbacks. It was noted that the application included a substantial area of mixed, native broadleaf at the area closest to the watercourse.

In the first instance, the FAC considered the grounds that refer to Appropriate Assessment. Under Article 6(3) of the Habitats Directive, any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The FAC consulted publicly available information from the NPWS and EPA and noted that only one European site is within 15km of the application area Blackwater River (Cork/Waterford) SAC (002170) and having regard to the nature, scale and location of the application agreed that there was no reason to extend the radius in this case. The FAC noted the copy of the screening contained in AA undertaken and is satisfied that the screening recorded on the Inspectors Certification represents an obvious technical error that should not impact on the decision. The FAC is satisfied that the DAFM adopted a precautionary approach in proceeding with an AA in this case. The DAFM recorded the qualifying interests and conservation objectives of the SAC which include a number of aquatic species that are sensitive to water quality. Each qualifying interest is considered in turn with its conservation objectives and potential adverse impacts are identified. Specific mitigation measures are described. The DAFM recorded other plans and projects considered in-combination with the proposal. The AA is dated 6th February 2020 and concludes that that the project, either individually or in-combination with other plans or projects, will not adversely affect the integrity of any European site. The grounds of appeal do not identify any specific European site, effects or measures or concern but makes reference to Catchments and Turloughs. The proposal lies within the same catchment as the Blackwater River SAC and, as noted by the DAFM, the lands drain to this SAC which formed the basis for proceeding to Appropriate Assessment. The DAFM submitted that there are no Turloughs in the area or any European site within the general vicinity that include Turloughs as a qualifying interest. The Geological Survey of Ireland record this general area as Old Red Sandstone and the FAC could not identify any record of Turloughs. The FAC had regard to the record of the decision and the grounds of appeal, considered the Appropriate Assessment undertaken by the DAFM and the nature, scale and location of the proposal and concluded that there was no evidence that the Minister had erred in their making of the decision regarding Appropriate Assessment in this instance.

While not directly queried in the grounds, the FAC also considered the record of the DAFM in regard to Environmental Impact Assessment (EIA). The EU EIA Directive sets out in Annex II a list of projects for which member states must determine through thresholds or on a case by case basis (or both) whether or not EIA is required. The Irish Regulations, in relation to forestry licence applications, require the compliance with the EIA process for applications relating to afforestation involving an area of more than 50 Hectares, the construction of a forest road of a length greater than 2000 metres and any afforestation or forest road below the specified parameters where the Minister considers such development would be likely to have significant effects on the environment. The proposal involves the afforestation of 13.77 ha. The DAFM considered the application across a range of criteria, including water, designated areas, landscape and cumulative effects, and determined that the project was not required to undergo the EIA process. A record of these considerations was retained.

The proposal would involve the planting of private, agricultural land with a mixture of tree species. Access to the lands from the public road was submitted as being in place. The land is described as being within a Freshwater Pearl Mussel Catchment but not within 6km of a recorded habitat. An Appropriate Assessment was undertaken and specific mitigation measures were attached to the licence. There are no recorded monuments on the lands but a number to the northwest and an Archaeological report was prepared and specific mitigation measures are attached to the licence included a requirement for archaeological monitoring. The lands are not within a designated landscape. The FAC noted that the stream to the south forms part of the Clyda 030 waterbody which has been assigned a Good status (2013-2018) and Not at Risk regarding the Water Framework Directive by the EPA and the DAFM had recorded a consideration of the issue. The FAC agrees that there is no reason to consider that the proposal as licenced would constitute a threat to water quality. The FAC queried a number of the responses recorded in relation to EIA. Question 40 was answered in the negative and it was submitted that this was a technical error and that submission had been received, as recorded, and were considered in making the decision. The FAC is satisfied that this was a technical error in the record. It was submitted at oral hearing that there are no invasive species present on the site. The FAC considered the information provided, including maps and specification details, and considered that the DAFM had sufficient information before it to consider and screen the application and noted that a number of field inspections had been undertaken by the DAFM. Having regard to the record of the decision and the submitted grounds and the nature, scale and location of the proposal the FAC is satisfied that the proposal would not result in any likelihood of significant effects on the environment and that the Minister did not err in their decision made regarding EIA.

In considering the appeal the FAC had regard to the record of the decision, the submitted grounds of appeal, and submissions received. The FAC is not satisfied that a serious or significant error or a series of errors was made in making the decision or that the decision was made without complying with fair procedures. The FAC is thus affirming the decision of the Minister regarding licence CN84493 in line with Article 14B of the Agricultural Appeals Act 2001. In affirming the decision, the FAC considered that the application would be consistent with Government Policy and Good Forestry Practice.

Yours sincerely,

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

Vincent Upton On Behalf of the Forestry Appeals Committee