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30th March 2021

Subject: Appeal FAC 070/2020 regarding licence CN84728

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 CN84728 is for the afforestation of 6.46 hectares at Rathscanlan, County Sligo which was approved by the Department of Agriculture, Food and the Marine (DAFM) on the 5th February 2020.

Hearing

An oral hearing of appeal FAC070/2020 was held by the FAC on 11th March 2021.

In attendance:

FAC Members: Mr. Des Johnson (Chairperson), Mr Luke Sweetman, Mr. Dan Molloy, Mr. Derek Daly

Secretary to the FAC: Mr. Michael Ryan

DAFM Representatives: Ms. Mary Coogan, Mr. Seppi Hona.

Appellant: [REDACTED]

Applicants: [REDACTED]

Decision

Having regard to the evidence before it, including the record of the decision by the DAFM, the notice of appeal, submissions received including 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 CN84728.

Licence.

The licence pertains to the the afforestation of 6.46 hectares at Rathscanlan, County Sligo. The proposal would involve the planting of 3.89 hectares of Sitka spruce; 1.33 hectares pedunculate oak with the remaining areas comprising broadleaf woodland of alder and birch planted in groups. A bio area of scrub 0.33 hectares in area is also proposed. The soil type underlying the project area is stated as predominantly podzols in nature. The slope is predominantly flat to moderate and not adjoining or

containing an aquatic zone. The vegetation type within the project area comprises wet grassland with rushes.

The proposal was referred to Inland Fisheries Ireland who did not respond.

The application was referred by the DAFM for an archaeological assessment and the response dated 25th November 2019 indicated no objections but did recommend a setback of 10 metres from the historic railway line adjoining the site.

An Appropriate Assessment screening was carried out and recorded on the file. The screening considered 10 sites within 15km and that there was no need to expand this radius in this case and other plans and projects considered are recorded. The European sites considered were Cloonakillina Lough SAC 001899; Doocastle Turlough SAC 000492; Flughany Bog SAC 000497; Lough Hoe Bog SAC 000633; Lough Nabrickkeagh Bog SAC 000634; Ox Mountains Bogs SAC 002006; River Moy SAC 002298; Templehouse and Cloonacleigha Loughs SAC 000636; Turloughmore (Sligo) SAC 000637; and Unshin River SAC 001898. The proposal's potential in-combination effect was also assessed. The overall conclusion was to screen out all sites concluding no possibility of a significant effect on any Natura site, and that Appropriate Assessment was not required owing to the absence of aquatic zones, the absence of pathways to Natura sites and the scale and location of the project.

The licence was issued on the 5th February 2020 subject to standard conditions and a specific condition No 12, relating to archaeology.

Appeal.

There is one appeal against the decision.

The grounds in summary refer to the absence of any significant relevant watercourse within or adjoining the project and how is significant water course defined with reference to scientific certainty; AA Screening does not comply with the law. Reference is made to the requirements of the Habitats Directive. Reference is made to Court decisions on the matter including Kelly v An Bord Pleanála, and case C258/11. Reference is made to obligations under 2011 EC (Birds and Natural Habitats) Regulations referring specifically to keeping of records. It is also indicated where a turlough is concerned it is necessary to show evidence there is no underground connectivity with the development lands. Reference is also made to the CJEU Judgement C323-17 and that all aspects of likely effects must be considered referring to a NPWS document.

In a statement to the FAC, in regard to the granted licence the DAFM states that the decision was issued in accordance with the DAFM procedures, SI 191/2017 and the Forestry Act. It also states that DAFM is satisfied that all criteria as outlined in the standards and procedures have been adhered to in making the decision on the application. The statement from the Forestry Inspectorate indicates that the application was assessed using the relevant AA procedure applicable at the time. All Natura 2000 sites within 15km were screened out and the information relating to this can be found on file in the AA

screening section. No pathway was identified and there is an absence of a hydrological connection to any Natura site.

An oral hearing was held of which all parties were notified and representatives of the DAFM and FAC sat remotely. The DAFM presented an overview of their processing of the licence and the screening assessment undertaken; that a desk assessment was undertaken, and all sites were screened out. No watercourse was identified on or adjoining the site and relevant database layers were examined in certifying the application.

At the hearing the FAC raised issues relating to setback from hedgerows, clarification was sought in relation to the process of certification, including the in-combination and screening and the chronology of these processes in advance of the issuing of the licence. The issue of potential hydrological connections in relation to the site was also raised. The issues were addressed by DAFM to the satisfaction of the FAC.

In addressing the appeal, the FAC, in the first instance examined the procedures followed by the DAFM before concluding that EIA is not required in this case. The decision under appeal relates to a licence for the afforestation of an area of 6.46 hectares and is significantly sub threshold for mandatory assessment under Irish Regulations which set a threshold requirement for such mandatory assessment at 50 hectares. The afforestation of trees, as part of a forestry operation, does not therefore fall within the mandatory classes referred to in the Directive, and is similarly not covered by the Irish regulations (S.I. 191 of 2017). In the assessment of the licence the DAFM carried out an assessment of the project under many criteria including cumulative effects, water, soils, species, ecology and visual impacts concluding EIA was not required. The FAC is satisfied that the DAFM had adequate information before it in respect of the characteristics of the proposed development, the location and the type and potential impacts arising from the proposed development to enable a preliminary screening for EIA and considers that there is no convincing reason to doubt the conclusion of the preliminary assessment that EIA is not required. Therefore, the FAC is satisfied that the conclusion that EIA is not required is correct.

Under Article 6(3) of the Habitats Directive, any plan or project not directly connected with or necessary to the management of a European site, must be subject to an assessment of the likely significant effects the project may have on such a designated site, either individually or in combination with other plans or projects, having regard to the conservation objectives of that designated site.

In considering the appeal the FAC examined the Appropriate Assessment undertaken by the DAFM including the initial screening. The FAC examined publicly available information from the Environmental Protection Agency and National Parks and Wildlife Service and identified the same ten sites as the DAFM within 15km from the proposal. The FAC is satisfied that there was no need to extend the radius in this case. The FAC considered the nature, scale and location of the proposal, the European sites identified and their conservation objectives and the reasons for screening out for Stage 2 Appropriate Assessment provided by DAFM for their conclusions. The DAFM considered each site in turn and provided the reasons for screening all the sites out for Appropriate Assessment. Details of other plans and projects

were also examined. The FAC is satisfied that the DAFM did not make any serious or significant error in their Appropriate Assessment screening and concurs with the conclusions reached.

The inspector's determination was also reviewed by the FAC at the oral hearing in relation to AA screening and the consideration of in-combination effects prior to the issuing of the licence. The FAC concluded it is adequately reasoned based on the responses received and the documentation forming the application.

Reference is made in the grounds of appeal to where a turlough is concerned to show evidence there is no underground connectivity with the development lands. No specific turlough is referred to. The screening for Appropriate Assessment identified Doocastle Turlough SAC 000492 within 15 kilometres. Doocastle Turlough SAC 000492 is located a minimum of 5 kilometres to the east of the project. There is no evidence of any hydrological connectivity between the project site and Doocastle Turlough SAC 000492. Overland flows in the vicinity of the site are to the west and northwest. Data on the turlough suggests a mix of groundwater contribution, flood duration, and permanently flooded/wet areas. In relation to overland flow a small intermittent stream flows into the turlough from the east and it was also recorded that there was no external drainage. Any overland flows in the area of the turlough are to the south east and the zone of contribution of the turlough is small. Based on the information available there is no evidence to suggest underground or overland connectivity to the turlough or any other turloughs from the site.

In relation to general hydrological connections the site is within the Moy _50 River Waterbodies Water Framework Directive status of which is indicated as good and projection is indicated as not at risk for the period 2013-2018. The FAC is satisfied based on the information available to it, that there is an absence of an aquatic zone on or proximate to the site and there is no direct or proximate hydrological connection to a waterbody.

The FAC therefore considers and is satisfied that no issues arise to constitute errors in the making of the decision regarding licence CN84728. In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal, and submissions received including at the oral hearing. The FAC is satisfied that no serious or significant error or a series of errors was made in making the decision and that the decision was made while complying with fair procedures. The FAC is thus affirming the decision of the Minister regarding licence CN84728 in line with Article 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,

A black rectangular redaction box covering the signature of the official.

Derek Daly On Behalf of the Forestry Appeals Committee