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31st March 2021

Subject: Appeal FAC 552/2020 regarding licence CN86568

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 14A (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 CN86568 is for the afforestation of 11.18 hectares at Countenan, County Cavan which was approved by the Department of Agriculture, Food and the Marine (DAFM) on the 22nd July 2020.

Hearing

An oral hearing of appeal FAC552/2020 was held by the FAC on 25th March 2021.

In attendance:

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

Secretary to the FAC: Mr Michael Ryan

DAFM Representatives: Ms Eilish Kehoe, Mr Jhan Crane

Appellant: [REDACTED] Not present

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 CN86568.

Licence

The licence pertains to the the afforestation of 11.18 hectares at Countenan, County Cavan. The site is divided into six plots with 7.32 hectares of Sitka spruce proposed to be planted on four of the plots; with the remainder broadleaf woodland species, Alder with an area of 1.7 hectares in one plot and 1.3 hectares of Birch planted in groups in five of the plots. The remaining plot is a bio area of scrub 0.87

hectares in area. The soil type underlying the project area is stated as predominantly podzols in nature. The slope is predominantly flat to moderate. The project area it is stated does not contain/adjoin an aquatic zone and the vegetation type within the project area comprises wet grassland with hedgerows and mixed broadleaves woodland. There are dwellings located adjacent to the eastern boundary and electricity transmission lines cross the site.

The file was referred to Cavan County Council and no response was received.

An Appropriate Assessment screening was carried out and recorded on the file. The screening considered 2 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 Lough Oughter and Associated Loughs SAC 000007 and Lough Oughter SPA 004049. 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 Nature site, and that Appropriate Assessment was not required owing to the absence of aquatic zones; the absence of pathways to Natura sites; beyond the foraging range of any of the Qualifying Interests and the scale and location of the project.

The licence was issued on the 22nd July 2020 subject to standard conditions.

Appeal

There is one appeal against the decision.

The grounds in summary refer to on what authority has the Forest Service (FS) and FAC overruled J Finlay by requesting further information from the FS. The FAC must make up its mind as to whether it is deciding an appeal or a review. Incomplete decisions should be returned to the FS. The decision it is stated does not comply with the Habitats Directive, the Birds Directive and the Environmental Impact Assessment Directive. The test for AA Screening is merely to determine that there may be such an effect. Reference to CJEU Judgement C323-17 in relation to assessment and that other forestry projects be indicated and also Natura sites. Reference is also made to CJEU Judgement C254-19 and obligations of member states. The grounds further state that all aspects of likely effects must be considered referring to a National Parks and Wildlife Service (NPWS) document. Reference is also made to the FAC and its obligations which are binding on all authorities of Member States.

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 site was screened for Appropriate Assessment and two Natura sites were identified within a 15 kilometre radius and were screened out and the reasons are indicated in the statement. The project was also assessed for any in- combination effects.

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 also a field inspection of the site 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 the biodiversity plot, to site conditions and it was indicated that the site was wetter in the southern part and this area would be planted with alder. The setback from dwellings located on the eastern boundary was raised and attention was brought to the presence of a high hedge in this section of the site which in addition to the set back would reduce any visual impact. The issue of potential hydrological connections in relation to the site was also raised. The issues were addressed by the 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. Afforestation is a class of development to which the EIA Directive applies and where the proposed development is sub-threshold, a screening or a preliminary examination in respect of EIA is required. The decision under appeal relates to afforestation of 11.18 hectares, as part of a forestry operation which is significantly sub-threshold for mandatory assessment under Irish Regulations (S.I. 191 of 2017) which set a threshold requirement for such mandatory assessment at 50 hectares.

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 AA screening undertaken by the DAFM. The FAC examined publicly available information from the Environmental Protection Agency and NPWS and identified the same two 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. 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 by the DAFM concluding the project does not represent a source, or if so, has no pathway for an effect on any of the Natura sites listed in AA screening conclusions and

the DAFM deems that this project, when considered in combination with other plans and projects, will not give rise to the possibility of an effect on the Natura sites.

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 Certification was also reviewed by the FAC at the oral hearing in relation to Appropriate Assessment 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.

In relation to general hydrological connections the site is within the Laragh_30 River Waterbody WFD status is good and in terms of risk 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 CN86568. 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 CN86568 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 Derek Daly.

Derek Daly On Behalf of the Forestry Appeals Committee