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9th April 2021

Subject: Appeal FAC 247/2020 relating to Licence CN84574.

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.

Licence

The licence pertains to 9.25 Ha. of afforestation of GPC 3 species at Halls Co. Leitrim. The application was submitted to the DAFM on the 19th of August 2019. Two submissions were received on the licence application; [REDACTED] The licence was approved by the Department of Agriculture, Food and the Marine (DAFM) on the 12th May 2020 with conditions including archaeology.

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

Hearing

An oral hearing of the above appeal of which all parties were notified, was held by the FAC on 26th of March 2021.

FAC Members:	Mr. Donal Maguire (Deputy Chairperson), Mr. Vincent Upton, Mr. Derek Daly and Mr. Iain Douglas.
Appellant:	[REDACTED]
Applicant:	[REDACTED]
DAFM	Ms. Mary Coogan, Mr. Seppi Hona.
Secretary to the FAC	Ms. Marie Dobbyn, Ms. Heather Goodwin (Observer).

Decision

Having regard to the evidence before it, in particular the submissions at the oral hearing given by the appellant, the applicant and the DAFM, the record of the decision by the DAFM, the notice of appeal, and the considerations set out hereunder, the FAC has decided to vary the decision of the Minister to grant licence Reference CN84574 at Halls Co. Leitrim to include the conditions set out below.

Background

An undated Inspector's Certification Pre-Approval Report certified by the DAFM on 22/01/2020 indicates that a desk inspection only was carried out on the proposal. The report describes the soil type underlying the project area as predominantly podzols in nature, with a predominantly flat to moderate (<15%) slope

and that the site does not adjoin or contain an aquatic zone(s). The vegetation type(s) within the project area comprise grass/rush.

The report notes that there is one Natura 2000 site within 15Km of the proposed afforestation, the Cuilcagh - Anierin Uplands SAC Site Code 000584 and records an Appropriate Assessment (AA) screening decision to screen out the application on the basis that there is:

- an absence of any aquatic zone within or adjoining the project area.
- the absence of any significant relevant watercourse(s) within or adjoining the project area.

The report also contains an in-combination assessment carried out by the DAFM that concludes that the project, when considered in combination with other plans and projects, would not give rise to the possibility of a direct or indirect effect on the integrity of any Natura 2000 site in view of those sites' conservation objectives.

The Inspector's Certification Pre-Approval Report also contains an assessment of 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 planting to the EIA process.

The licence application was referred to the archaeology section of the Forest Service Inspectorate. The archaeology report noted that there are no Recorded Monuments within the site and that the nearest monument is 160m to the west. There are two clusters of historic farm buildings within the area to be afforested and recommended that a number of conditions be attached to the licence.

Appeal

There is one appeal by [REDACTED] against the decision to grant the licence. The grounds of appeal are summarised as follows:

- Non-compliance with Regulation 5(2) of the Forestry Regulations 2017, application invalid.
- Areas selected as ABE do not represent the best areas for biodiversity enhancement within the new forest as required by Section 6.2 of the Forestry Standards & Procedures Manual.
- No compliance with Article 4 of the EIA Directive.
- Inadequate EIA screening of the proposed development, noncompliance with Article 2(1) and 4(2) of the Directive.
- Proposed access route to development is questionable and clarity should have been sought before licence was granted.
- The cumulative effect and high percentage of afforestation in Halls and adjacent townlands is having a negative impact on farmers in this area on their viability and sustainability in addition to the wider local community.
- Noncompliance with EU Water Framework Directive. The cumulative effect of this proposal and others will have negative impact on water quality in Lough Rinn, Lough Forbes and the waters of the River Shannon.

Oral Hearing

At the oral hearing, the DAFM provided a Statement of Fact dated 10/06/2020 confirming the administrative details of the licence CN84574 as outlined above and states that the DAFM is satisfied that

all criteria in its standards and procedures had been adhered to in making the decision on this licence application.

A Statement of Fact was provided by the DAFM Inspectorate dated 28/09/2020 stating that the relevant Appropriate Assessment (AA) procedure dated (05Nov2019) was applied at the time and that the project was screened out after Standard Operating Procedures were followed.

The DAFM confirmed to the FAC that the dates on the Statement of Fact were when the Inspector's Certification Report and the In-Combination Statement were completed and that both third party submissions on the licence application were considered prior to the licence being issued. The DAFM stated that a field inspection had been carried out and found that the land sloped west to east, that the land was in grass and rushes, that the soil was in fact wet mineral soil, that there was no hydrological connection from the site to the Relagh River southeast of the site, that the site drainage would be by mound and collector drains and percolation to ground. There would be no impact on the landscape or the existing dwelling. The Inspector confirmed that the existing access was suitable for traffic normally used for planting and that the proposed access would accommodate traffic normally used for harvesting. Forestry is not a pressure in the Cloone sub-catchment. A report from Leitrim County Council was requested but no reply was received.

The appellant submitted that non-compliance with Regulation 5(2) of the Forestry Regulations 2017 rendered the licence application invalid. The biomap did not show all hedgerows, the site notice was not at the site entrance it was proposed to use, no site drainage was shown, that there was no entrance from the proposed access road onto the public road.

The appellant further submitted that an EIA was required by the DAFM as a result of the cumulative impacts of existing and proposed forestry in the area. The townland is 175 Ha of which 80 Ha is forested, this and three 3 other planting applications will bring the total planted area to more than 100 Ha. Some 250 Ha. of forestry has been planted within 5km of this site and that planting within 5km should be subject to EIA under the cumulative impact of such forestry. The appellant stated that all aspects of EIA including the impact on society should be examined.

The appellant submitted that Appropriate Assessment was required as the site was within 15km of a number of proposed Natural Heritage Areas which are treated on a par with Natura 2000 sites as far as the Habitats Directive was concerned.

The appellant submitted that the proposed planting would have an impact on the water quality of Lough Rinn and the river Shannon and would negatively impact on those waters from achieving good status as required under the Water Framework Directive.

The applicant confirmed to the FAC that the new access shown on the application documents had been acquired to the lands from the public road south of the existing access. The existing access is adequate for vehicles required for planting the forest. The new access will be used when harvesting takes place. The applicant confirmed that he owned the lands.

Consideration by the FAC

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

The aerial photographs submitted with the application show the site almost entirely surrounded by agricultural land with a small portion of the site boundary adjoining an existing forest on the northeast corner of the site. The site is separated from other nearby forestry located c.132m to the southeast by agricultural land, a public road and the Relagh River.

Soil type is identified as Gley on the GSI mapping, which is generally an acid, deep, poorly drained mineral soil.

The river southeast of the site is identified as River Waterbody Relagh_010 in the WFD River Waterbody Status report 2013-2018 and has good ecological status and is not at risk. The WFD 3rd Cycle categorises the river waterbody as not at risk. There is no direct hydrological connection between the site and this river waterbody.

The Relagh_010 River Waterbody is part of the Upper Shannon Catchment 26C and the Cloone [Lough Rinn]_SC_010 sub-catchment.

The underlying groundwater body is Mohill (IE_SH_G_171) has good overall status. The waterbody not identified as being at risk in the WFD 3rd Cycle programme.

The proposed planting 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 only Natura site identified as being within 15km of the site is the single site examined in the AA Screening. The location of the project area is downstream of the Natura 2000 site, the Cuilcagh - Anierin Uplands SAC Site Code 000584 and consequently there is no hydrological connection to that site.

The FAC noted that DAFM completed and recorded a screening for Appropriate Assessment (AA) that determined that the proposal itself and in-combination with other plans and projects would not impact on a Natura site. The FAC concurs with this conclusion.

The FAC noted that under the Forestry Regulations 2017 Article 5(2)(a), an application for a licence in respect of afforestation works should contain an Ordnance Survey map or other map delineating the boundary of the land to which the application relates and a number of physical features, including hedgerows to be clearly marked on the map.

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

Regulation 5(2) of the Forestry Regulations 2017

With regard to the appellant's view that the details in the application are not an accurate representation of those required under Regulation 5(2) of the Forestry Regulations 2017, the FAC considered the documentation submitted, in particular the External Features Map which shows the relevant items required by Article Regulation 5(2). Having examined aerial photography from 2020 the FAC is satisfied that the hedgerows shown on the External Features Map represent the most significant hedgerows on the site. The maps also show public roads, wayleaves, archaeological sites and features and aquatic features. The future access and forest road is also marked. The FAC is satisfied that the mapped information was appropriate in this case.

In considering the decision as issued the FAC noted that the licence conditions do not include the Environmental Requirements for Afforestation (DAFM, 2016). As noted in that document:

"Any statutory approval (with or without grant aid) for afforestation is conditional on adherence to the measures set out in these Environmental Requirements for Afforestation, to the conditions of approval, and to the standards and procedures set out in the Forestry Standards Manual."

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The FAC concluded that the failure to include adherence with these Requirements as a condition of the licence represents an error in the making of the decision. Furthermore, the FAC considered the reference to the "Forestry Schemes Manual" in the licence is a typographical error and that further clarity is required to avoid doubt regarding adherence with the Forest Standards Manual. In addition, while the Environmental Requirements replace existing guidelines, the Forestry and Water Quality guidelines form part of the assessment undertaken in this specific case and, in this regard, the FAC considered that clarity is required regarding adherence with these guidelines. In addition and for the purpose of clarity, the FAC considered that the archaeological condition should be attached to the licence more explicitly. The FAC is thus varying the decision to approve the licence by inclusion of the following conditions:

The afforestation project and all associated operations shall be carried out and completed in accordance with the measures set out in the Environmental Requirements for Afforestation (DAFM, 2016), Forestry and Water Quality Guidelines (Forest Service, 2000) and the Forestry Standards Manual (DAFM, 2015).

Reason: In the interest of Good Forestry Practice and the Protection of the Environment.

A 10 metre wide unplanted buffer zone/setback shall be provided around any remains of historic buildings (including wall footings etc.) and other buildings within the development area, and a 5m wide unplanted buffer zone/setback shall be provided around any attached infields and the access lane. See attached archaeological report and accompanying illustrative map for further details

Reason: In the interest of Good Forestry Practice and the Protection of Archaeological Heritage

Areas for Biodiversity Enhancement (ABE)

With regard to the appellant's view that the areas selected as ABE do not represent the best areas for biodiversity enhancement as required by Section 6.2 of the Forestry Standards Manual 2015. The FAC considered this section of the Standards and the related tables identifying acceptable areas for retention as ABE and the documentation submitted, in particular the Biodiversity/Operational Map. The FAC notes that the ABE is centred on the existing dwelling, which will have a 60m buffer between it and the nearest planting. The FAC also notes that there is a requirement for hedgerows to have a 3m buffer between them and the nearest planting. The FAC is satisfied that the proposed unplanted buffers and forest design are acceptable and appropriate in this case.

EIA Directive.

With regard to the appellant's view that Article 4 of the EU EIA had been breached. The FAC in considering the two grounds of appeal relating to Article 4 of the EU EIA Directive had regard to the fact that the EU EIA Directive sets out in Annex I a list of projects for which EIA is mandatory. Annex II contains 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. Neither afforestation nor deforestation is referred to in Annex I. Annex II contains a class of project specified as "initial afforestation and deforestation for the purpose of conversion to another type of land use" (Class 1 (d) of Annex II). 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 afforestation of a length greater than 2000 metres and any afforestation or afforestation below the specified parameters where

the Minister considers such development would be likely to have significant effects on the environment. At 9.25 Ha, the afforestation proposed is significantly sub-threshold for the mandatory submission of an EIAR.

The FAC noted that the DAFM recorded 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 the EIA process. 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.

Proposed access route to development

With regard to the appellant's view on the proposed access route. The FAC notes that there is an existing access to a dwelling house that also serves the lands to be planted which, the DAFM confirmed is suitable to accommodate the type of traffic normally used when planting forestry. The FAC also notes that a future forest road is shown on the documentation submitted and that the applicant owns the land on which that road is to be built will be subject to a separate consent procedure. The FAC is satisfied that the existing access is sufficient to meet the needs of this afforestation licence.

Social Impact

With regard to the appellant's view that afforestation in Halls and surrounding area is having a negative impact on the viability and sustainability of farms and the wider local community. The FAC notes that its role is to ensure that proper procedure was followed in the issuing of the licence and that matters related to the making of Forest Policy are not within its remit. The FAC considered the design of the proposal and the measures proposed regarding setbacks and the planting of diverse broadleaf species. The FAC notes that the land is not within an area of High Visual Amenity or an area with a conservation or landscape designation and is classified as having a high capacity or low sensitivity in relation to forestry in the Leitrim County Development Plan 2015-2021.

The FAC queried whether consultation was held with the owner of the dwelling in closest proximity to the proposal. The Applicant stated that it was. A site notice was erected in relation to the proposed planting and notice was published on the DAFM website and members of the public were provided with an opportunity to make submissions on the application. Furthermore, appeals can be made to the FAC and the FAC held an oral hearing in this case. The FAC is satisfied that the DAFM had not erred in their considerations in this regard.

EU Water Framework Directive

With regard to the appellant's view that the cumulative effect of this proposal and others will have a negative impact on water quality in Lough Rinn, Lough Forbes and the waters of the River Shannon. The FAC notes that there is no hydrological link for this site to closest WFD River Waterbody Relagh_10. Having regard to the nature, scale and location of the proposal and the conditions under which operations would be undertaken; the FAC considers that the proposed afforestation does not pose a risk to the river waterbody or to water quality generally.

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal and submissions received at the oral hearing. The FAC is satisfied that a serious or significant error or series of errors was made in making the decision the subject of the appeal. The FAC is thus varying the decision of the Minister regarding licence CN84574 in accordance with Section 14B of the Agricultural

Appeals Act 2001, as amended. In deciding to vary 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.

Iain Douglas, On Behalf of the Forestry Appeals Committee

