



[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

8th April 2021

Subject: Appeal FAC 090/2020 regarding licence CN84666

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 CN84666 for the afforestation of 1.1 ha of land at Derrybeg, Killeigh, Co Offaly was approved by the Department of Agriculture, Food and the Marine (DAFM) on 13th February 2020.

Hearing

An oral hearing of appeal FAC 090/2020, of which all parties were notified, and representatives of the DAFM attended, was held by the FAC on 31st March 2021.

In attendance at Oral Hearing:

Department Representative(s):	Ms. Mary Coogan, Mr. Ciaran Nugent,
Appellant:	[REDACTED]
Applicant / Representative(s):	[REDACTED]
FAC Members:	Mr. John Evans (Deputy Chairperson), Mr. Derek Daly, Mr Vincent Upton and Mr. Seamus Neely.
Secretary to the FAC:	Ms. Marie Dobbyn.

Decision

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notice of appeal, submissions made at the oral hearing and all other submissions received, and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to vary the decision of the Minister regarding licence CN84666.

The licence pertains to the afforestation of 1.1 ha of land at Derrybeg, Killeigh, Co Offaly. The soil type underlying the project area is described in the Appropriate Assessment screening documentation as being predominantly podzolic in nature and the slope is described as predominantly flat to moderate. The DAFM undertook a screening for Appropriate Assessment of the proposal and found that there were eight European sites (7 SAC & 1 SPA) within 15km and that there was no reason to extend the radius in this case. The eight sites identified are, Charleville Wood SAC 000571, Clara Bog SAC 000572, Clonaslee Eskers And Derry Bog SAC 000859, Raheenmore Bog SAC 000582, River Barrow And River Nore SAC 002162, Slieve Bloom Mountains SAC 000412, Slieve Bloom Mountains SPA 004160 and Split Hills And Long Hill Esker SAC 001831. All eight sites were screened out and the project did not proceed to Appropriate Assessment. The sites are all considered in turn in the Appropriate Assessment documentation on file. The DAFM also recorded other plans and projects that were considered in combination with the proposal. The DAFM considered the environmental effects of the proposal across a range of criteria and determined that the project was not required to undergo the EIA process. A submission was received on 9th September 2019 from a member of the public. The application was referred to the Offaly County Council and a response was received stating that the proposed afforestation will have no impacts on protected view VO1 and that Offaly County Council have no objections to the proposal. The licence was approved with conditions on 13th February 2020.

There is one appeal against the decision. The grounds, in summary contend that the Appropriate Assessment screening does not comply with the requirements of the law, that no assessment regarding EIA has been carried out, and queries whether a list of referenced afforestation proposals exceed 50ha. The grounds also contend that the decision does not comply with the Habitats Directive, the Birds Directive and the Environmental Impact Assessment Directive, submits that that the inspector has taken into consideration measures intended to avoid or reduce the harmful effects of the plan or project on that site, and submits that the test for Appropriate Assessment Screening is: it is may have an effect. The appeal refers to a number of Court Judgements including Case C-323/17 and includes extracts from it. The appeal also includes a copy of documentation on Department of Culture, Heritage and the Gaeltacht headed paper. The Appellant also submitted grounds relating to suggested legal obligations of the Forestry Appeals Committee.

In a statement to the FAC, the DAFM confirmed the timeline of the application as outlined above and stated that the application was desk assessed. It also states that the decision was issued in accordance with the procedures, S.I. 191/2017 and the 2014 Forestry Act and also set out that the Department is satisfied that all criteria as outlined in the standards and procedures listed in the statement have been adhered to in making a decision on the application. The statement asserts that the DAFM is satisfied that the application has been subjected to very thorough Appropriate Assessment screening measures, in accordance with current procedures and that this included a comprehensive in-combination effects statement dated 11/02/2020. The statement concludes that there is no potential for the proposed project to contribute to any adverse effects on any of the Natura sites either when considered alone or in-combination with existing land use and other plans and projects.

An oral hearing of the appeal was held of which all parties were notified and representatives of the DAFM attended. The DAFM representatives outlined the processing of the application and the information submitted by the Applicant including maps of the proposal. They described the Appropriate Assessment and EIA considerations undertaken and the conclusions reached. They reiterated the broad content of the statement of facts provided to the FAC. The DAFM representative, in response to questions at the oral hearing and arising from contentions in the grounds of appeal, confirmed that he was satisfied that the DAFM has not taken into consideration measures intended to avoid or reduce the harmful effects of the plan or project and further confirmed that he had evaluated the Afforestation Licence application (CN84666) and the certification decision using various appropriate GIS datasets on IFORIS system. He advised that the application had been referred to Offaly Co. Council on landscape grounds and that while the area is designated as landscape sensitive it does not intersect with any other environmental designations. He stated that he is satisfied that the application has been assessed correctly. In response to queries at oral hearing in relation to the hydrology of the project area, the DAFM representative described the location of the nearest mapped watercourse at c 600m distance (the Clodiagh (Tullamore)_040 Waterbody and which has an un assigned status) and outlined his view that the project area is not hydrologically connected to it such that it could have an impact on the waterbody concerned. He also described the terrain as being flat and his belief that a water crossing would not be required for the project. In relation to the Appropriate Assessment (AA) screening and in response to a question as to the absence of reasons being shown on the AA screening for the screening out of both the River Barrow And River Nore SAC 002162 and the Slieve Bloom Mountains SPA 004160, the DAFM representative confirmed that the reasons for the screening out in the case of these two sites were set out in an email dated 13th February 2020 as included in the records provided to the FAC and that the reasons are due to distance and the absence of a hydrological connection between the project area and the European sites concerned.

The FAC, in the first instance, considered the Appropriate Assessment screening undertaken by the DAFM. The grounds of appeal do not identify any specific European site, any specific pathways or effects of concern. Using publicly available information from the NPWS and EPA the FAC confirmed the same eight sites as the DAFM within 15km of the proposal. The FAC considered that given the nature, scale and location of the proposal there was no need to extend this radius in this case. The FAC noted that the eight sites identified within 15 km of the project (Charleville Wood SAC 000571, Clara Bog SAC 000572, Clonaslee Eskers And Derry Bog SAC 000859, Raheenmore Bog SAC 000582, River Barrow And River Nore SAC 002162, Slieve Bloom Mountains SAC 000412, Slieve Bloom Mountains SPA 004160 and Split Hills And Long Hill Esker SAC 001831) were each considered in turn by DAFM and the reasons for screening out each of the eight sites were provided (reasons provided for six of the sites in the AA screening were contained within the inspectors certification documentation and for the remaining two, ie River Barrow And River Nore SAC 002162 and the Slieve Bloom Mountains SPA 004160 in an email dated 13th February 2020 as referenced earlier in this letter). The DAFM also recorded other plans and projects that were considered in combination with the proposal.

In considering the decision as issued the FAC noted that the licence conditions to not include the Environmental Requirements for Afforestation (DAFM, 2016). As noted in that document (page 2),

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.

The FAC concluded that the failure to include adherence with these Requirements as a condition of the licence represents a serious and significant error in the making of the decision. Furthermore, the FAC considered the reference to the Forestry Standards Manual to contain a typographical error and that further clarity is required to avoid doubt regarding adherence with these standards. 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 and that the decision to approve the licence should be varied to include the following condition;

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.

The grounds of appeal submit text attributed to the DAFM and states that “*The inspector has taken into consideration measures intended to avoid or reduce the harmful effects of the plan or project on that site.*” The specific text attributed to the DAFM does not form part of the Appropriate Assessment screening record before the FAC. However, with reference to licence conditions and the condition being added by the FAC and for the avoidance of doubt; as noted, these Requirements, Standards and Guidelines are of a generic nature and are generally attached to all consents issued by the DAFM. They do not contain measures intended to avoid or reduce harmful effects on a European site, while they do refer to Appropriate Assessment procedures in a general manner, and relate to general good and established practice that form an integral part of proposed operations. In the specific case under appeal, no specific effects, pathways or European sites are identified in the grounds. The FAC considered the location, nature and small scale of the proposal, the record of the decision, the grounds of appeal and environmental information in the public domain and did not identify effects that could occur on a European site related to the proposed planting. In reaching this conclusion the FAC is not satisfied that the DAFM made a significant or serious error in its handling of the Appropriate Assessment screening in this case and concurs with the conclusions reached.

The FAC considered the grounds relating to Environmental Impact Assessment (EIA) and related matters. 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. 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 as described is for the afforestation of 1.1 hectares and is considerably sub-threshold for the mandatory submission of an EIA report. 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. The grounds of appeal do not outline any specific concerns regarding significant effects on the environment of the proposal. The FAC is not satisfied that a serious or significant error or a series of errors occurred in the DAFMs conclusion regarding EIA. The FAC is satisfied that an EIA was not required in this case.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal, submissions received including at the oral hearing. The FAC is satisfied that a significant error or series of errors was made through the failure to include as a condition of the licence adherence with Environmental Requirements for Afforestation (DAFM, 2016) where at page 2 they set out that;


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.

Furthermore, and as set out earlier in this letter, the FAC considered the reference to the Forestry Standards Manual to contain a typographical error and that further clarity is required to avoid doubt regarding adherence with these standards. 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. The FAC, having considered this omission, is not satisfied that any further significant errors or series of errors were made in the making of the decision in this case, such as to render the entire application and licence unsatisfactory and neither that the application was processed without complying with fair procedure. The FAC is thus varying the decision in line with Article 14B of the Agricultural Appeals Act 2001 to include the following condition;

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.

In deciding to vary the decision, the FAC concluded that the Minister shall reissue the licence to the applicant with the condition above attached to it.

Yours sincerely,


Seamus Neely On Behalf of the Forestry Appeals Committee

