



An Coiste um Achomhairc
Foraoiseachta

Forestry Appeals Committee

16 April 2021

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FAC ref: 225/2020

Subject: Appeals in relation to afforestation licence CN85100

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine (DAFM) in respect of afforestation licence CN85100.

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 the parties to the appeal.

Background

Licence CN85100 was granted by the DAFM on 02 April 2020.

Hearing

An oral hearing of appeal 225/20 was conducted by the FAC on 13 April 2021.

Attendees:

FAC Members:	Mr Des Johnson (Chairperson), Mr Luke Sweetman, Mr Dan Molloy & Mr Pat Coman
Secretary to the FAC:	Mr Michael Ryan
DAFM representatives:	Mr Martin Regan & Ms Mary Coogan

Decision

The Forestry Appeals Committee (FAC) considered all of the documentation on the file, including application details, processing of the application by the DAFM, the grounds of appeal, submissions made at the Oral Hearing and all other submissions, before deciding to affirm the decision to grant this licence (Reference CN 85100).

The proposal is for afforestation on a stated site area of 1.45ha at Corry, Co. Leitrim. Trees to be planted would be 85% Sitka spruce and 15% Broadleaves. Soils are stated to be mineral, the slope flat to moderate and the aspect is south-west. The lands are enclosed and the vegetation is stated to be grass-rush. Mounding is proposed and planting would be angle notch. Fertiliser at the rate of 250kg/ha would be applied.

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The Inspector's Certification states that the proposed development was desk assessed. The site is not acid sensitive, is not within a Freshwater Pearl Mussel catchment and has no archaeological features. It is not in a Prime Scenic Area designation in the County Development Plan and there are no High Amenity considerations. There is approximately 4.02% forest cover in the townland and approximately 13.1% within 5km. Screening for Appropriate Assessment considered the following Natura 2000 sites within a 15km radius -

1. Boleybrack Mountain SAC
2. Cuilcagh-Anierin Uplands SAC
3. Lough Gill SAC

All sites were screened out for Stage 2 Appropriate Assessment for reasons of the position of the project lands downstream of a Natura 2000 site, lack of hydrological connectivity, absence of aquatic zone on or adjoining the site, absence of any relevant watercourse within or adjoining the site, and location of the project lands in a separate waterbody catchment, and no upstream hydrological connection.

In-combination plans and projects considered were dwellings, and forestry related (focus on Corry and since 2016) - afforestation (8), Roads (5), Felling (5), Coillte Felling (9).

DAFM referred the application to Leitrim County Council. The response states that the lands are classified as Medium Capacity/Medium Sensitivity in terms of landscape capacity to absorb forestry. This designation envisions that the landscape may be able to accommodate new small-scale woodlands provided their scale, siting and species composition are in character. It appears that there is no impact on any Recorded Monument. Conditions are recommended in the event of the proposal being permitted.

The licence issued on 02.04.2020. It is subject to standard conditions plus

- Retain all existing broadleaves hedgerows and plant additional broadleaves adjacent to same
- Contact the County Council Engineer regarding use of public roads etc.
- Adhere to forestry and water quality guidelines
- All guidelines to apply.

There is a single appeal against the decision to grant the licence. The grounds of appeal notes that the proposal was only desk assessed and contends that there is a breach of Article 4(3) of the EIA Directive as criteria in Annex III did not form part of the standard screening, there was a lack of referrals to prescribed Bodies/specialist units within the Forestry Service, Lough Allen is a Priority Area for Action under the Water Framework Directive River Basin Management Plan but the application was not referred to the relevant Prescribed Body, the site is a short distance from a recorded area of semi-natural grassland which includes a species on the Flora (Protection) Order (FPO). There was no proper assessment by a competent authority to determine if a species on the FPO is present or could be supported, or whether the project could impact on nearby lands which support a species on the FPO, this general area is known to be a suitable habitat for the Marsh Fritillary Butterfly, Kingfisher, Otter and Bats (Annex IV). Ross More, sub-lough of Lough Allen is regularly used by Whooper Swans as a wintering site. There is no evidence of potential impact on these protected species. There is no evidence of the Otter and Forestry Guidelines applying. The



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approval is not consistent with landscape requirements. The proposal is ecologically and visually incongruous. This site has a high proportion of scrub and trees. The lands are most probably emerging semi-natural woodland and, if so, cannot be afforested. The Site Notice shows an incorrect townland. There was no assessment for HNV farmland. There will be a need for a forest road and this should have been assessed. Details of the whole project have not been provided in breach of Article 4(4) of the EIA Directive.

In response, the DAFM state that all criteria were fully adhered to and approval is in order. A secondary audit approved without amendments.

An Oral Hearing was convened on 13.04.2021 and all parties were invited to attend. The FAC sat remotely and the DAFM participated remotely. The applicant and the appellants did not participate. The DAFM detailed the background to the making of the decision to grant the licence. The in-combination report has been received and considered in the making of the decision to grant the licence. *The Inspector's recommendation was randomly chosen for audit by the Regional Inspector who accepted the recommendation without change.* The public notice had been replaced on 05.11.2019 because the first notice referred to the incorrect townland and a revised BioMap submitted. Responding to the FAC, the DAFM stated that the project lands are approximately 50m from the lake and that this intervening buffer comprises existing broadleaves. The proposal would include the planting of additional broadleaves. The lake is not a designated European site. There is no evidence of any drain from the project lands to the lake. This area is not designated as Prime Scenic Area in the County Development Plan. *The aerial photography indicates 5 separate pockets of existing broadleaves (probably Alder) on the site and these would be retained.* There is no significant percentage of scrub on the site. The surrounding farmland has no designation that would warrant refusal of the proposed development.

The FAC noted that the project lands comprise small enclosed fields in proximity to the shores of Lough Allen. The wider area is rural and agricultural in character. The proposed development is very significantly sub-threshold for the purposes of mandatory environmental impact assessment (EIA). The FAC is satisfied that there was adequate information before the DAFM in respect of the characteristics of the proposed development, the location and the type and characteristics of potential impacts, before screening out the proposed development for EIA. Based on the information before it, the FAC finds no reason to consider that the conclusion reached by the DAFM that EIA is not required in this case is incorrect. While considering the proximity of the project lands to Lough Allen, the FAC noted that there is no hydrological connection and that there is a buffer of broadleaves between the two. In these circumstances, and having regard to the nature and scale of the proposed development, the FAC finds no reason to conclude that the proposed development would have any adverse effect on water quality or on Lough Allen. The appellants contend that the site is a short distance from a recorded area of semi-natural grassland which includes a species listed in a Flora Protection Order (FPO) but fail to give details of the habitat or the species to which the FPO applies. There is no evidence before the FAC to substantiate this contention or to indicate how the proposed development would be likely to have any adverse impact on either the habitat or species referred to. It is also contended that the general area is known as a suitable habitat for the

Marsh Fritillary Butterfly and other listed Annex IV species and that Lough Allen is regularly used as a wintering site by Whooper Swans. The FAC considers that there is no convincing evidence before it to indicate that any of the listed species exist on the project lands or that the proposed development of 1.45ha of afforestation would have any adverse impact on any of the listed species or on the Otter, which is also referred to. Evidence presented at the Oral Hearing referred to small existing pockets of broadleaves on the site, which would be retained, but no significant coverage of scrub or emerging semi-natural woodland, as contended by the appellants. The FAC noted that the wording of the Site Notice had been amended at the request of the DAFM to refer to the correct townland and that the revised notice had been displayed as required.

Having considered the written grounds of appeal and all other evidence before it, the FAC concluded that there was no significant or serious error or series of errors in the making of the decision by the DAFM or that the decision was made without complying with fair procedures. In deciding to affirm the decision to grant the licence, the FAC considered that the proposed development is consistent with Government Policy and Good Forestry practice.

Yours Sincerely

Pat Coman, on behalf of the FAC