



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

14th January 2021

Subject: Appeal FAC145/2019 regarding licence TFL00277819

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 TFL00277819 for 0.55 ha of felling at Moytirra, Co. Sligo was approved by the Department of Agriculture, Food and the Marine (DAFM) on 9th May 2019.

Hearing

An oral hearing of appeal FAC145/2019 was held by the FAC on 6th January 2021. In attendance:
FAC Members: Mr. John Evans (Deputy Chairperson), Mr. James Conway, Mr. Seamus Neely, Mr. Vincent Upton

Secretary to the FAC: Ms. Marie Dobbyn

Appellant: Not present

Applicant's Representatives: [REDACTED]

DAFM Representatives: Mr. Emmet Byrnes, Mr. Seppi Hona, Ms. Eilish Kehoe

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 set aside and remit the decision of the Minister regarding licence TFL00277819.

The licence pertains to an application for a felling licence for 0.55 ha at Moytirra, Co. Sligo. The forest is currently composed of Sitka spruce and replanting would be with 90% Sitka spruce and 10% birch as required in the conditions on the licence. The application was referred to Sligo County Council, Inland Fisheries Ireland and the National Parks and Wildlife Service. The County Council provided a response which advised in relation to adherence with forestry guidelines and the protection of water and the

manner in which operations should be undertaken. A submission on the application was also made by a member of the public. The licence was issued with conditions on 9th May 2019.

There is one appeal against the licence decision. The grounds of appeal state that the Appellant is opposed to the development in relation to the preservation and remediation of a nationally important archaeological site and landscape. It is submitted that the proposal is incompatible with national Landscape policy, that the replanting proposal of 10% is not compatible with the Forestry Programme 2014 —2020 which was granted EU approval for State Aid on the basis that 30% of planting / replanting would be broadleaf. That there was a statistical misrepresentation of the area and that the DAFM register of decisions advertised an area of 0.49 ha. The appeal was accompanied by the original submission made on the application and a journal article (Mount, C. 1996. The Environmental Siting of Neolithic and Bronze Age Monuments in the Bricklieve and Moytirra Uplands, County Sligo. The Journal of Irish Archaeology).

In responding to the appeal, the DAFM provided a statement addressing the grounds of appeal, including a statement from a Senior Archaeologist. The DAFM stated that it is satisfied that all criteria as outlined in its standards and procedures have been adhered to in making a decision on the application. In relation to the landscape it is submitted that plantation is part of the local landscape and the Appellant has raised a personal opinion that this site should not be re-planted. The clearfelling and replanting of this site adheres to the Felling & Reforestation policies and the Forestry Act 2014. In relation to the state aid rules it is submitted that the felling licence under appeal is not related to any funding scheme and that there is no general requirement to adhere to a percentage of broadleaf replanting while licence conditions have been attached in this case. In relation to the area of the licence and the suggested statistical misrepresentation, the DAFM submitted that the application and licence refer to an area of 0.55 ha while when the DAFM was digitising the submitted maps an area of 0.49ha was calculated and that this was advertised on the DAFM website.

It is submitted that there was no requirement to refer the application to the National Monuments Service of the Department of Culture, Heritage and the Gaeltacht in this instance and that,

The nearest Recorded Monument/SMR site - a moated site (SL 035-083) - is some 390m to the SSW of the Plot, with two intervening pasture fields and a public road, and all the nearby monuments are screened from the plot by existing forestry.

There are no historic dwellings within or proximate to the Plot recorded either on the 1st edition OS 6-inch map or on the later OS 25-inch of the area. In fact up to the late 19th century the immediate area of the plot was a largely a strip of unenclosed and low-lying marginal land.

It is submitted that Early Prehistoric monuments within the larger complex of monuments on the NE-SW axis of Moytirra ridge which is the principle focus of the study submitted with the appeal lies 850 metres from the licenced forest and that none of the tombs have alignments obscured by the forest plot in question nor are any of the visual linkages between the Moytirra ridge and the Bricklieve Uplands to the

West, across Lough Arrow, in any way inhibited by it. It is further submitted that the monuments in question were constructed over two and a half millennia and that forest cover varied considerably over this time and reference is made to the study submitted by the Appellant in this regard. The statement further submits that there is uncertainty regarding the mythological associations of the area and it is noted that the area is not identified in the Sligo County Development Plan 2017-2023 regarding archaeology while the Moytirra ridge is classified as a 'Sensitive Rural Landscape'. It is submitted that while this classification might be considered in relation to an afforestation application that the DAFM did not consider it warranted placing a block on normal forestry operations in existing forests. Regarding the identification, investigation of and protection of any new archaeological sites, monuments or features it is submitted that in this specific case that sufficient safeguards are provided for under the licence conditions and the standalone statutory obligation under the National Monuments Acts 1930 to 2014.

An oral hearing of the appeal was held and was attended by representatives of the DAFM and the Applicant. The DAFM re-submitted aspects of the written statement and highlighted that, procedurally, the proposal would not have been automatically referred for archaeological review or to the National Monuments Service. It was submitted that the closest recorded monument was 390 metres from the proposal and that the proposal is bordered by existing managed forest. It was submitted that while Moytirra Ridge has been designed for landscape sensitivity in the County Development Plan, that the proposal does not fall within this area. Regarding the suggestion to require the deforestation of the land it was submitted that it was the policy of the Minister not to allow deforestation and that this would constitute a different form of development and would require screening for EIA. It was further submitted that the Minister is required to consider the application as submitted and that it would not be good administrative practice to attach conditions that were so onerous as to constitute a material change in the proposal or to effectively refuse the application outside of the reasons provided for in law. It was submitted that forest cover in the area would have varied considerably over millennia and that some of the recorded monuments would have been built during periods of higher forest cover. Regarding the differences in the proposal area, it was submitted that a difference arose in the area following the digitisation of the submitted map and that an area of 0.49 ha had been advertised on the DAFM website. It was confirmed at the oral hearing that the proposal lies in Moytirra West and that this was advertised alongside the area.

The FAC considered in the first instance, the grounds related to the proximity of the proposed felling to recorded monuments and the wider landscape. The FAC examined publicly available information from the National Monuments Service and confirmed that the closest recorded monument is some 390 metres from the proposal. The Moytirra Ridge is classified as a Visually Vulnerable Area and the surrounding landscape is classified as a Sensitive Rural Landscape in the Sligo County Development Plan 2017-2023. The proposed felling does not fall within either of these designations. The forest is located in an area with existing managed forest and agricultural land. The FAC also considered that the granting of the licence does not exempt the holder from meeting any legal requirements set out in any other statute, such as the National Monuments Act. The FAC concluded that it was not satisfied that the DAFM had erred in their processing of the application and that there was no convincing evidence before it that the application should have been refused or varied.

The FAC has no remit regarding grant aid or schemes. The licence as issued includes a condition to replant the area with 10% birch, which represents an increase in the area of broadleaf in the forest. The FAC is not satisfied that the DAFM erred in specifying this condition or that there is sufficient reason to vary it. In relation to the area of the proposal, the DAFM submitted at the oral hearing that the discrepancy had arisen when the boundary was being digitised. The FAC considered that the application and licence both relate to an area of 0.55 ha. The site is of a very small scale and the townland and county were advertised correctly. The FAC concluded that the difference in areas advertised on the DAFM website and the licence could not be considered to have a material outcome on the decision.

The DAFM undertook and documented an appropriate assessment screening of the proposal and identified two sites within 3km of the proposal, Lough Arrow SAC (001673) and Lough Arrow SPA (004050). The proposal was screened out based on mandatory adherence to any safeguards within the project, as set out in Forest Service Guidelines, requirements and procedures without any reference to an absence of pathways or effects. The record does not contain a consideration of other plans and projects in combination with the proposal. The FAC is satisfied that this constitutes a serious error in the making of the decision and is, thus, remitting the decision back to the Minister to undertake a new screening of the application for appropriate assessment.

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 a serious error was made in making the decision and is setting aside and remitting the decision back to the Minister to undertake an appropriate assessment screening of the proposal itself and in combination with other plans or projects under Article 6 of the EU Habitats Directive before a new decision is made.

Yours sincerely,

A black oval redaction box covering the signature of Vincent Upton.

Vincent Upton On Behalf of the Forestry Appeals Committee