



**An Coiste um Achomhairc
Foraoiseachta**

Forestry Appeals Committee

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[REDACTED]

13th January 2021

Subject: Appeal FAC193/2020 in relation to afforestation licence CN85364

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 licence CN85364. 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

Afforestation licence CN85364 was granted by the DAFM on 18th March 2020.

Hearing

An oral hearing of appeal 193/2020 was conducted by the FAC on 15th December 2020.

Attendees:

FAC: Mr Des Johnson (Chairperson), Mr Pat Coman, Ms Paula Lynch & Mr Luke Sweetman

Secretary to the FAC: Mr Michael Ryan

Appellant: [REDACTED]
[REDACTED]

Applicant's representative: [REDACTED]

DAFM representatives: Ms Mary Coogan & Mr Seppi Hona

Decision

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Forestry Appeals Committee**

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The 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 (CN 85364).

The licence is for the afforestation of 8.23ha at Aghalough, Co. Leitrim. The proposed project site is on enclosed land currently in Grass/Rush and described as an exposed site on mineral soil at 70-90m elevation with a west/neutral aspect which is not prone to flooding. The slope is predominantly flat to moderate (<15%) and the area does not adjoin or contain any aquatic zones. Road access is provided. The application is for 7.67ha GPC3 (90% Sitka spruce, 10% Additional Broadleaves), 0.41ha GPC8 (90% Downy birch, 10% Additional Broadleaves) and a 0.15ha unplanted "Bio" plot. The application states that the ground preparation will be mounding and woody weed removal. Slit planting and manual vegetation control is planned for the site as is an application of 250kg/ha of ground rock phosphate. 1150m of sheep fence will be erected along the eastern boundary. Additional "Bio" areas are included along access route, hedgerows and roadway totalling 0.56ha. The proposed development is within the Upper Shannon (26C) Catchment and the Cloone[LoughRinn]_SC_010 Sub-Catchment.

The licence was granted with standard conditions plus specific archaeological conditions.

In assessing the application, the DAFM carried out a Stage 1 Appropriate Assessment (AA) screening which identified two Natura 2000 sites within 15km of the project site; Lough Oughter and Associated Loughs SAC 000007 & Lough Oughter Complex SPA 004049. Both sites were screened out for AA and the DAFM concluded there was no possibility of a significant effect on any Natura site, and Stage 2 AA was not required. An In-Combination Statement was produced to assess the proposed project's potential to contribute to an in-combination impact on Natura sites. This was completed, and considered, prior to the DAFM deciding to grant licence approval. The DAFM consulted various websites regarding plans and projects in the general vicinity of the proposed development (Leitrim County Council, the Environmental Protection Agency, An Bord Pleanála) as well as the County Development Plan 2015 - 2021. The DAFM consulted their internal records for forestry-related plans in the general vicinity of the project site which showed numerous afforestation, forest roads, felling and thinning licences from 2013 – 2019. The In-Combination Statement concluded that the project, "when considered in combination with other plans and projects, will not give rise to the possibility of a significant effect on a Natura site."



The DAFM did not consult any external referral bodies in relation to this application but did refer to a DAFM Archaeologist. The Archaeologist's report states that the area proposed for afforestation is contiguous to one recorded monument; Ringfort (LE 029-021), and includes a list of conditions which "should be adhered to during the proposed afforestation works". These conditions were included in the approval letter issued to the Applicant.

There is a single appeal against the decision to grant the licence. The grounds contend that:

- the DAFM breached Article 4 (3) of the Environmental Impact Assessment (EIA) Directive which states that where a case-by-case examination for screening is carried out the relevant selection criteria set out in Annex III shall be taken into account. A number of criteria set out in Annex III do not form part of the DAFM's screening assessment and have not been considered. This application should be referred back to the EIA screening stage
- The DAFM has failed to carry out an adequate EIA screening of the proposed development as is required under Irish and EU law.
- The cumulative impact of afforestation is not sufficiently considered. There is a very considerable amount of forestry in the general area with more approved.
- Inadequate consideration of the Water Framework Directive (WFD) River Basin Management Plan
- The site is in the catchment of a number of pNHA's including lakes. None of the lakes in the catchment are of good or high quality status. The objectives of the WFD are unlikely to be met by further afforestation of this catchment.
- I suspect that Inland Fisheries Ireland (IFI) and the EPA were not consulted.
- The licence does not provide adequate protection for wild birds during the period of breeding and rearing.

In response, the DAFM submitted a comprehensive written statement which was in two parts. Section 1 responded to the grounds related to the EIA Directive; this included a stepwise breakdown of the screening for sub-threshold EIA process undertaken and determination made by the DAFM, pursuant to the relevant provisions of the Forestry Regulations 2017, and how that process and determination relates to the requirements of Article 4(3) and the criteria set out in Annex III of the EIA Directive (Directive 2011/92/EU, as amended by Directive 2014/52/EU). The DAFM stated that in this instance an EIA was not recommended as:

- 1) The project area below the mandatory 50 ha threshold; and
- 2) The impact of an additional area of forest cover on the existing landscape and environment was not deemed to be substantial based on local site-specific criteria.

Section 2 of the DAFM's response dealt with the Appellant's remaining grounds and stated that there are no national designations anywhere near this proposal. There is no hydrological connectivity connecting the proposed site to any watercourse, Natura 2000 site or national designation such as an NHA. The protection of wild birds and mammals is governed under the remit of the Wildlife Acts for which the National Parks & Wildlife Service (NPWS) is responsible. It is for landowners and their agents to ensure they carry out their operations within the law. DAFM is not the regulatory agency responsible for enforcing the Wildlife Acts.

The FAC held an Oral hearing on 15th December 2020 at which the DAFM outlined their approach to their desk-assessment of the licence application and reiterated much of the information submitted in their written statement to the FAC. The Appellant contended that the District Inspector had been negligent in approving this application as it adjoins another block of forestry belonging to the same Applicant and that the cumulative impact of forestry had not been recognised in the AA screening. They stated that all outflow from the project site will end up in the River Shannon and the proposal should have been subject to a field inspection. The Appellant contended that the percentage forestry cover in the adjoining Townland had not been considered properly and that there are a lot of Lakes and wetlands in the area which would be impacted by the amount of plantation forestry.

The Applicant's representative (AR) at the oral hearing read a statement on their behalf. This stated that the Applicant, a local farmer of advanced years with health issues, had no wish to sell but found the land to be heavy and marginal requiring constant drainage and considered the forestry option as a good alternative for this type of land. He also has a genuine interest in forestry. The AR stated that the land was a heavy, wet, compacted mineral soil and described it as "daubby". They said that Rushes on the site required multiple cuts per year to control. The FAC queried the planned drainage on site and noted the location of Lough Donogher c.90m to the north of the site. The AR stated that the site slopes towards the road adjoining its western boundary and that mound drains on the site would drain to the west and would contain silt traps before filtering into a buffer zone before the road.

The FAC queried the DAFM in relation to their In-Combination Statement and the list of forestry projects (c.130 sites) dating as far back to 2013 and what area had been taken into account. The



DAFM stated that the In-Combination Statement was produced centrally and that they were unsure as to the area considered. It was confirmed that the forest plot which adjoins to the south-east belonged to the same Applicant and had recently been felled and replanted. Under questioning by the FAC, the Appellant did not provide any specific evidence relating to wild birds on the site but stated that the area was home to various water birds and Cuckoos in the springtime. They contended that woody weed removal would result in the removal of bird habitat. The AR responded that hedgerows on site would be protected by a 5m setback and that drains would run along the same direction rather than damage them. The DAFM stated that, according to www.Catchments.ie, the water quality of the Upper Shannon (26C) Catchment was “good” and that the significant pressure affecting the greatest number of water bodies is agriculture, followed by hydromorphological pressures, other, urban waste water, peat, diffuse urban, domestic waste water, forestry and industry. The Appellant argued that Lough Rinn (c. 12km from the proposed development) had been assigned poor quality status and that it was impossible to (carry out forestry) work on 130 sites and not affect water quality. The Appellant contended that the same Applicant had been granted four or five licences and that the amount of land taken for commercial forestry is not beneficial to the social and economic fabric of Leitrim.

In addressing the grounds of appeal relating to the EIA Directive, the FAC assessed the screening procedures followed by the DAFM before concluding that an EIA is not required in this case. The proposal, for 8.23ha of afforestation, is considerably sub-threshold for mandatory EIA under Irish Regulations where the threshold for such mandatory assessment is set at 50ha. Having considered the written evidence submitted by the DAFM and further submissions at the oral hearing, the FAC is satisfied that the DAFM had adequate information before it to enable a preliminary screening for EIA. Based on the information before it, the FAC considered that there is no convincing evidence to indicate that the DAFM made a serious or significant error, or series of errors, in deciding that an EIA is not required.

The FAC had regard to the Appellant’s grounds that the DAFM gave insufficient consideration to the cumulative impact of afforestation. The FAC noted the DAFM’s In-Combination Statement which considered numerous plans and projects (both forestry and non-forestry) in the general vicinity of the proposed development. The FAC also noted the Inspector’s Certification report which listed the forest cover in the Townland as circa 8.46% and approximately 6.3% at waterbody level. The DAFM’s written statement to the FAC states that they do not deem these figures to be excessive. The FAC

observed that the project lands have no hydrological connection to other listed forestry projects in the vicinity. Based on the evidence before it, the FAC is satisfied that the DAFM gave sufficient consideration to the cumulative impact of forestry in the general vicinity of the proposed project site prior to deciding to grant the afforestation licence (CN85364).

The FAC considered the Appellant's grounds relating to water quality and pNHAs. The FAC noted the DAFM's evidence that there are no aquatic zones within, or adjoining, the proposed project site. They also noted that forestry cover in the underlying waterbody was circa 6.23% at the time of application. The FAC noted the flat to moderate slope of the site (<15%) and the nature of the planned drainage on-site as described by the AR. The FAC considered the DAFM Inspector's assessment, contained within the Inspector's Certification report, that "adherence of this proposal to the Forestry and Water Quality Guidelines, and any additional conditions attached to the approval be sufficient to prevent any potential significant impact to aquatic zones and their Q value". The FAC is satisfied that the DAFM had adequate regard to the requirements of the WFD. The FAC observed that there are pNHAs in the wider area of the proposed development (including Lough Sallagh, Lough Errew and Lough Rinn) but there is no evidence of direct hydrological connection from the application site and no obvious pathway for any adverse effects on these sites arising from the proposed development. The FAC observed that the approval letter for the licence at issue requires the licensee to comply with Departmental guidelines and requirements for Landscape, Water Quality, Harvesting, Biodiversity and Archaeology. The FAC noted that mandatory referral to statutory consultees e.g. NPWS, was not required in this instance and that the DAFM Inspector chose not to make a discretionary referral in relation to this application.

In regards to the Appellant's contention that the licence does not provide adequate protection for wild birds during the period of breeding and rearing, the FAC observed that the Appellant did not provide any site-specific details in relation to any species of concern. The FAC note that the granting of an afforestation licence does not exempt the licensee from meeting any legal requirements set out in any other statute.

Based on the evidence before it, the FAC concluded that the DAFM did not make a serious or significant error, or series of errors, and complied with fair procedures in the process of making their decision to grant this licence (CN85364). In deciding to affirm the decision to grant the licence, the FAC considered that the proposed development would be consistent with Government policy and good forestry practice.



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Yours sincerely,



Luke Sweetman on behalf of the Forestry Appeals Committee