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30 June 2021

Subject: Appeal FAC 600/2020 in relation to licence CN85604

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Minister for Agriculture, Food and Marine in respect of licence CN85604.

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 CN85604 for afforestation of 1.17 hectares(ha) at Sonnagh, Co. Mayo was granted by the Department of Agriculture, Food and the Marine (DAFM) on 28th July 2020.

Hearing

An oral hearing of appeal FAC 600/2020 in relation to licence CN85604, of which all parties were notified, was held by a division of the FAC on 31st May 2021. In attendance:

FAC Members: Mr. Myles Mac Donncadha (Chairperson), Mr. James Conway,
Mr. Seamus Neely & Mr. Derek Daly

Appellant: [REDACTED]

Applicant / Representative(s): [REDACTED]

Department Representative(s): Mr. David Ryan & Ms. Mary Coogan

Secretary to the FAC: Mr. Michael Ryan, Ms. Ruth Kinehan (Observer)

Decision

The Forestry Appeals Committee considered all of the documentation on the file, including application details, processing of the application by DAFM, the notice of appeal, and all submissions received including at oral hearing, before deciding to vary the decision of the Minister to grant this licence (Reference CN85604).

The licence pertains to afforestation of 1.17ha of enclosed land in Sonnagh, Co. Mayo. It consists of one block of land split by an ESB corridor into two plots of GPC 9, with species Alder, Birch, Pedunculate Oak and Rowan, and one plot for Bio due to a setback from a dwelling. Ground preparation would include woody weed removal and invert mounding, the planting method is to be slit planting and up to 250kg Granulated Rock Phosphate per hectare may be applied. Herbicide control is proposed in years 0, 1, 2 and 3.

The proposal area is in within the River Sub Basin Sonnagh (Moy)_010, Moy_SC_040 and Moy & Killala Bay WFD Catchment (34). The Sonnagh (Moy)_010 river waterbody has a poor WFD status (2013 – 2018), with extractive Industry is identified as a river pressure.

The DAFM referred the application to the NPWS, who replied stating no comment on this application but provided some generic material. A stage 1 Appropriate Assessment screening in relation to the provisions

of the Habitats Directive, is documented as part of the DAFM Inspector's Certification document. This screening listed eight European sites within 15km of the proposal, these being Cloonakillina Lough SAC, Dooastle Turlough SAC, Lough Hoe Bog SAC, Lough Nabrickkeagh Bog SAC, Ox Mountains Bog SAC, River Moy SAC, Turloughmore (Sligo) SAC and Urlaur Lakes SAC 001571 and there was no reason to extend this radius in this case. The sites were considered in turn with reasons given for screening out each site. The proposal's potential to contribute to in-combination effects on European sites was also considered with other plans and projects in the vicinity of the site listed. The DAFM also 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. The DAFM approved the application on 28th July 2020 with conditions.

There is one appeal against the decision. Broadly the grounds of the appeal submitted are;

- A breach of Article 2(1) and Article 4 (3) of the EIA Directive 2014/52/EU.
- That the Determination of the Inspector in terms of the Requirement for an EPA is inadequately reasoned as there is no foundation for the conclusion reached on the basis of the responses to the IFORIS checkbox queries or any other basis upon which this conclusion is made and there is, in consequence, an error of law in the processing of this application.
- The details for the EIA screening contained on IFORIS contain errors of fact.
- An adequate EIA screening has not been conducted as there is insufficient evidence of consideration of the potential impact on potential species and habitats.
- There is insufficient evidence that the lands have been assessed as High Nature Value farmland.
- The Stage 1 AA conclusion is not legally valid.
- Licence conditions do not provide, as would be required by Article 12 of the Habitats Directive, a system of strict protection for the animal species listed in Annex IV (a) of that Directive in their natural range, prohibiting deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration.
- Licence conditions do not provide a general system of protection for all species of birds as would be required by Article 5 of the Birds Directive and referred to in Article 1 of that Directive; prohibiting in particular the deliberate destruction of, or damage to, their nests and eggs or removal of their nests.

The DAFM responded to the grounds of appeal stating that the licence application had been processed according to their procedures, SI 191 of 2017 and the Forestry Act 2014, and that all procedures/guidelines were adhered to. It was further submitted that the application was screened for Appropriate Assessment using the Appropriate Assessment Procedure SOP (5 November 2019), the Bird Foraging Table (6 January 2020), the Habitat table (18 December 2019), and the Species Table (30 January 2020), that Appropriate Assessment was deemed not to be required due to the facts of native woodland establishment with minimum cultivation, no fertiliser, small scale of 1.17ha, 640m distant with no hydrological connection. The assessment undertaken for EIA requirement was outlined in regard to the EIA Directive, that it was determined that an EIA was not required, that the legal requirements re Article 4(3) of the Directive were fulfilled and it submitted how cumulative impact was assessed. It was further submitted that the lands were assessed as improved agricultural grassland on upper slopes and wet grassland on lower heavier soils. There is no hydrological connectivity connecting the proposed site to any watercourse, Natura 2000 site or national designation such as a NHA. The protection of wild birds and mammals is governed under the remit of the Wildlife Acts for which the NPWS is responsible. It is for landowners and their agents to ensure they carry out their operations within the law. The DAFM is not the regulatory agency responsible for enforcing the Wildlife Acts.

At the oral hearing the DAFM opened by summarising their approach to processing the application and issuing the licence. The DAFM also submitted details regarding the nature, scale and location of the proposal, that a field inspection had been undertaken and that the proposal was revised to remove the option to apply fertiliser, which had been mistakenly included in the operational proposals, when a revised biomap was being submitted by the forester on 3rd July 2020 to update for hedgerows. In responses to

further questions from the FAC, the DAFM submitted that the conversion of the proposal area from the current reseeded grassland to Native Woodland Establishment would reduce environmental pressures, but that there was no relevant watercourse or aquatic zone on the site anyway and that this is in a lowland area with good mineral soil.

In addressing the grounds of appeal, the FAC considered, in the first instance, the contention that the decision does not comply with the EIA Directive. The EU 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 (nor clear-felling) are 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 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 DAFM recorded a consideration of the application across a range of criteria, including water, soil, terrain, slope, designated areas, archaeology, landscape and cumulative effects, and determined that the project was not required to undergo the EIA process. The proposal as described is for the afforestation of 1.17 ha with species of Oak, Birch, Rowan and Alder of agricultural land on a mineral soil with no hydrological connection to any river or European site. Having regard to the record of the decision and the submitted grounds and the nature, scale and location of the proposal, the FAC is satisfied that the proposal would not result in any likelihood of significant effects on the environment and that the DAFM did not err in the decision regarding EIA.

In addressing the Habitat Directive grounds of appeal, the FAC considered, under Article 6(3) of the Habitats Directive, any plan or project not directly connected with or necessary to the management of a European site, must be subject to an assessment of the likely significant effects the project may have on such a designated site, either individually or in combination with other plans projects, having regard to the conservation objectives of that designated site. In this case, the DAFM undertook a Stage 1 Appropriate Assessment screening, found eight European sites within 15km of the proposal - Cloonakillina Lough SAC, Doocastle Turlough SAC, Lough Hoe Bog SAC, Lough Nabrickkeagh Bog SAC, Ox Mountains Bog SAC, River Moy SAC, Turloughmore (Sligo) SAC and Urlaur Lakes SAC 001571 - and there was no reason to extend this radius in this case. The DAFM considered each site in turn, listed the reasons for the screening conclusions reached, giving in each case the separation distance and that there was no hydrological connection. The following additional reasoning was given with regard to the River Moy SAC; the nature of the project, in particular Native Woodland Establishment, minimum cultivation, no fertiliser, the nature of the project area, in particular small scale. The DAFM also undertook and recorded a consideration of other plans and projects, including forestry and non-forestry projects and they 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 any Natura site. The DAFM Appropriate Assessment screening conclusion was to screen out all the sites for Appropriate Assessment. The FAC consulted publicly available information from the NPWS and EPA and identified the same eight sites within 15km of the proposal area. The grounds of appeal do not identify any specific European site, effects or pathways of concern. The closest European site to the proposal area is the River Moy SAC at a distance of c. 0.64km as per DAFM Appropriate Assessment Screening, however DAFM submitted that there is no relevant watercourse or aquatic zone on the site, no hydrological connection from the site to a European site and of the forester correcting the operational proposals to no allowance for fertiliser. In considering all the evidence before it, including the size, nature and location of the proposal and having regard to other plans and projects, the FAC is not satisfied that a serious or significant error or series of errors was made in the making of the decision regarding Appropriate Assessment and concurs with the conclusions provided.

In relation to the ground of appeal referring to the Birds Directive it is noted that the appellant did not submit any specific details in this regard. Based on the evidence before it the FAC considered that the DAFM had undertaken an assessment of the proposal, completed a screening for Appropriate

Assessment, found eight European sites within 15km, all of which are SACs, screening each of them out and that Appropriate Assessment was not required. The FAC also note that the granting of a licence for an afforestation proposal does not exempt the holder from complying with any legal requirements set out in any other statute.

In considering the appeal the FAC had regard to the record of the decision, the submitted grounds of appeal and submissions received including at oral hearing. The FAC concluded that the DAFM made a serious or significant error when including 250kg Granulated Rock Phosphate as fertiliser in the Operation Proposals details enclosed with the licence approval and as condition #4 of the licence conditions states;

- Compliance with Operational Proposals and Specifications enclosed.

The FAC decided the following licence condition should be added to condition #13 of licence CN85604;

- No fertiliser to be applied.

Yours sincerely,

A black rectangular redaction box covering the signature of James Conway.

James Conway (on behalf of the Forestry Appeals Committee)