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28th June 2021

Subject: Appeal FAC 861/2020 relating to Licence CN85714

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.

Licence

The licence is for 11.08 Ha of afforestation of Sitka spruce and pendunculate oak species at Roscarban, Co. Leitrim. The application was submitted to the DAFM on the 21/01/2020. Between 26/02/2020 and 02/03/2020, twenty-three third-party submissions were received on the licence application. The Department of Agriculture, Food and the Marine (DAFM) approved the licence on the 19/11/2020 with a number of conditions including those of the archaeology section of the Forest Service Inspectorate.

There is one appeal against the decision to grant the licence.

Hearing

The appeal was considered by FAC Members: Mr. John Evans (Deputy Chairperson), Mr. Seamus Neely, Mr Vincent Upton and Mr. Iain Douglas on 02/06/2021. Having considered a summary of the record of the decision by the DAFM and the full grounds of appeal the FAC decided, in view of the information it had before it, that under Section 14C of the Agriculture Appeals Act, 2001 (as amended) that it was not necessary to conduct an oral hearing in this instance.

Decision

Having regard to the evidence before it, in particular, the full record of the decision by the DAFM, the notice and grounds of appeal, and the considerations set out hereunder, the FAC has decided to vary the decision of the Minister to grant licence Reference CN85714 at Roscarban, Co. Leitrim as issued.

Background

An Inspector's Certification Report certified by the DAFM on 18/11/2020 indicates that a both a desk and field inspection were carried out on the proposed afforestation. The report describes the soil type underlying the project area as predominantly podzolic in nature, with a predominantly flat to moderate (<15%) slope and that the site is crossed by/adjoins an aquatic zone(s). The vegetation type(s) within the project area comprise grass/rush.

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The report notes that there is one Natura 2000 site within 15Km of the proposed afforestation, the Cuilcagh-Anierin Uplands SAC (Site Code 000584) and records an Appropriate Assessment (AA) screening decision to screen out the application on the basis that the position of the project area is downstream from the Natura site, and therefore subsequently there is a lack of any hydrological connection.

The report is accompanied by an in-combination assessment carried out by the DAFM that concludes that the project, when considered in combination with other plans and projects, would not give rise to the possibility of a direct or indirect effect on the integrity of any Natura 2000 site in view of those sites' conservation objectives.

The Inspector's Certification Report also contains an assessment of the environmental factors relating to the proposed afforestation in order to determine whether the proposed afforestation requires an Environmental Impact Assessment Report (EIAR) and concludes that it is not necessary to subject the proposed afforestation to EIA.

The licence application was referred to the archaeology section of the Forest Service Inspectorate. The archaeology report dated 02/11/2020 has no objections and notes that the area proposed for afforestation does not contain, nor is it contiguous to any Recorded Monument and that the nearest monument is 100m to the south. The report contains three conditions for inclusion in the licence.

The licence application was referred to Leitrim County Council and An Taisce. Leitrim County Council replied on 28/02/2020 stating that some of the lands were OPW benefitting lands and that the landscape can accommodate new small-scale woodlands. The report also reminds the DAFM of its obligations under the AA and EIA Directives. The report concludes with three conditions to be attached should the project proceed. An Taisce replied on 25/02/2020 recommending that broadleaved species would protect that landscape better than Sitka spruce.

Appeal

There is one appeal by the Save Leitrim Group against the decision to grant the licence. The grounds of appeal are summarised as follows:

- Negative impact on local community.
- Vehicular access to this site has not been established and not marked on Biomap therefore the application is defective.
- The threat of forest fire to adjacent homes.
- Submissions from local objectors have not been recognised or assessed by the forestry inspector.
- The Forestry Inspector ticked No to Q11 therefore the application is defective.
- The EPA should have been consulted in relation to effects on water quality under Annex III, the NW fisheries and NPWS should have been consulted in relation to pollution of watercourses and destruction of habitats and biodiversity.
- The cumulative effects have not been assessed.

Hearing

At the hearing, the FAC had before it the full record of the DAFM decision, the full grounds of appeal submitted by the appellant and a Statement of Fact (SoF) dated 01/03/2021 confirming the administrative details of licence application CN85714 as outlined above and stating that the DAFM was satisfied that all

criteria in its standards and procedures had been adhered to in the making of the decision on this licence application.

The FAC also had before it a SoF by the DAFM Forestry Inspectorate dated 23/02/2021. The Inspector confirmed that the relevant AA procedure of November 2019 was in operation at the time, that it was applied, and that the proposed afforestation was screened out after Standard Operating Procedures were followed. The SoF contains a response to the third-party appeal. The Inspector also confirmed that the in-combination assessment dated 17/11/2020 was considered prior to the making of the decision.

Consideration by the FAC

The FAC consulted with publicly available mapping provided by the Environmental Protection Agency, the OSI, the Forest Service, and other on-line services.

Aerial photographs submitted with the application show the land as agricultural grassland with a small section of the site bounding the Shannon/Erne Waterway. There is little forestry in the immediate vicinity, one small forest circa 0.5 km to the southeast and another at the village of Drumcong 1km northwards.

Soil type is identified as Surface water Gleys and Groundwater Gleys on the EPA mapping, which is generally an acid, deep, poorly drained mineral soil. A small portion of the site adjoining the Shannon/Erne Waterway is identified as Fen Peat.

The part of the Shannon/Erne Waterway adjoining the site is not a river waterbody classified under the Water Framework Directive. Lough Scur nearby is considered at risk due to agricultural pressure.

The Shannon/Erne Waterway is part of the Erne Catchment and the Yellow (Ballinamore)_SC_10 sub-catchment.

The underlying groundwater body is Newtown-Ballyconnell (IEGBNI_NW_G_031) and has good overall status. The waterbody not identified as being at risk in the WFD 3rd Cycle programme.

The proposed afforestation is not within a Natura 2000 site nor is it required for the management of a Natura 2000 site. The FAC has confirmed that the only Natura site identified as being within 15km of the site, the Cuilcagh-Anierin Uplands SAC (Site Code 000584). The location of the project area is downstream of the Natura 2000 site, and consequently there is no hydrological connection relevant to the qualifying interests of that site.

The FAC noted that DAFM completed and recorded a screening for Appropriate Assessment (AA) that determined that the proposal itself and in-combination with other plans and projects would not impact on a Natura site. The FAC concurs with this conclusion.

The FAC noted that under the Forestry Regulations 2017 Article 5(2)(a), an application for a licence in respect of afforestation works should contain an Ordnance Survey map or other map delineating the boundary of the land to which the application relates and a number of physical features, including public roads to be clearly marked on the map.

In addressing the grounds of appeal, the FAC considered the following matters,

Negative impact on local community.

The FAC noted that this ground of appeal contains no detail as to what negative impact this afforestation will have on the local community. The FAC considers that issues related to national forest policy that, under law, is the responsibility of the Minister for Agriculture, Food and the Marine. The FAC can address only the grounds of appeal that relate directly to the licence for afforestation before it and cannot take account wider non-forestry considerations of afforestation on a particular area as these relate to forestry policy. The DAFM did record a consideration of the proposal across a number of criteria that includes both environmental and social effects and the cumulative effect of the proposal. Tree planting under the proposal is required to be set back 60 metres from dwellings. The land is private agricultural land with a network of existing hedgerows that will be retained and is not in a prominent position in the landscape. The proposal was referred to Leitrim County Council who responded that the lands are in an area considered in the Leitrim County Development Plan 2015-2021 to have a medium capacity, subject to the scale and design of the proposal and nature of the landscape, to accommodate forestry. The proposal was considered by a DAFM Archaeologist whose report included conditions in relation to cultural features on the lands.

The FAC noted that the site lies within a High Visual Amenity Area in the Leitrim County Development Plan 2015-2021 but that question 25 of the Inspector's Assessment to Determine EIA Requirement indicates that it is not. The designation relates to Lough Scur, St. John's Lough and environs (B9) in the County Development Plan. The Registered Forester did note the designation on the application form. The FAC noted the content of section 2.7 of the Environmental Requirements for Afforestation (DAFM, 2016) that advises Registered Foresters to have regard to areas of landscape designation. The land in question is well set back from the public road, is flat and not generally prominent in the landscape which is crossed by existing mature hedgerows and mature trees. Hedgerow, laneway and aquatic setbacks are provided for on the submitted maps and the proposal includes the planting of oak, a native, broadleaf species. Planting would not occur within 60 metres of a dwelling. Most of the proposed afforestation is well setback from the Shannon-erne waterway (Ballyconnell-Ballinamore Canal) to the south, although a small portion of the afforestation projects out from the main section and comes in close proximity to the waterway. Archaeological conditions require a 10 metre setback from the towpath at this boundary. The waterway is a well recognised and valued recreational and tourist amenity. While the FAC considers that, given the nature of the surrounding lands, the proposal is generally acceptable it is of the opinion that the small section to the south and its southern boundary should have been given greater consideration due to the designation of the lands and its closeness to the waterway. In this regard the FAC is varying the Minister's decision and requires that this small section of afforestation extending from plot 3 is treated as a separate plot and left unplanted or planted with a mixture of native broadleaves. The FAC is therefore attaching the following additional condition to the licence,

The southern section of land extending out from plot 3 to the waterway shall be treated as a separate plot and left unplanted or planted with a mixture of at least three native broadleaf species. At least the first three planting rows at the southern and western side of plot 3 to be comprised of native broadleaf species. Reason: In the interest of visual amenity.

Vehicular access to the site

The FAC noted that access to the site is shown on the Biomap dated 3/01/20 submitted with the application. The access is a private cul-de-sac road, off the public road, serving the existing fields. Two Gate/Access points from this road are shown on the documentation submitted with the application.

The threat of forest fire to adjacent homes.

The FAC noted the requirements set out in the Forestry Standards Manual 2015 stating that planting shall not take place within 60m of any dwelling or 30m with the written consent of the owner and that condition 2 of the licence mandates compliance with the Forestry Standards Manual amongst others. The FAC also noted that the site itself and surrounding lands are currently agricultural pasture, a type of vegetation and land management that is not conducive to the initiation or spread of fire.

Submissions from local objectors have not been recognised or assessed by the forestry inspector.

The FAC noted that question 37 in the Inspector's Certification Report "Assessment to Determine EIA Requirement" responds "yes" to the question *"Have any issues raised with the Forest Service by the general public and/or by non-government organisations been examined and considered?"* Twenty-three submissions from members of the public are included on the record that appear to have been made within 30 days of the DAFM notification based on the statement provided to the FAC. The FAC is of the opinion that there is no evidence that the third party submissions were not considered by the DAFM.

The Forestry Inspector ticked No to Q11 therefore the application is defective.

Question 11 of the Forestry inspector's certification asks, *"Is the amount and type of forest cover in this locality known to be a significant issue?"* The inspector has answered "no" to the question. The FAC noted that while it is stated that forest cover within 5km at present is approximately 14.4% of the land cover and is above the national average of 11%, forestry accounts for only 3.1% of the land cover of the underlying water body, Adhacashlaun_30 and that the amount of forestry in the vicinity of the site is limited. . The FAC also noted that the lands lie within an area of High Visual Amenity according to the County Development Plan and as noted by the County Council. As noted the lands are private agricultural lands and not in a prominent position. The existing hedgerows and mature trees will be retained. While a small portion of the land extends to the waterway it is setback from the water itself and the lands do not adjoin a public road. The FAC is varying the licence to address the perspective from the waterway to the south.

The EPA should have been consulted in relation to effects on water quality under Annex III, the NW fisheries and NPWS should have been consulted in relation to pollution of watercourses and destruction of habitats and biodiversity.

The FAC noted that the matters referred to in this ground of appeal are addressed in the Inspector's Certification Report under the heading "water" and that the site is not within the DAFM notification zone for the EPA (acid sensitive areas), IFI (areas sensitive to fisheries) or NPWS (Natura 2000 sites).

The FAC noted that the Biomap for the site shows the proposed afforestation draining to a watercourse running parallel to the Shannon/Erne waterway and discharging into Lough Scur. The Biomap shows the site drainage via silt traps to ensure the protection of water quality of the watercourse.

The cumulative effects have not been assessed.

The FAC noted that an assessment of cumulative effects arises from the requirement for an EIAR to address the *"the cumulation of effects with other existing and/or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources;"*. In considering this ground of appeal, the FAC had regard to the fact that 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. Neither afforestation nor deforestation is 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, or afforestation below the specified parameters where the Minister considers such development would be likely to have significant effects on the environment. At 11.08 Ha. the proposed afforestation is significantly sub-threshold for the mandatory submission of an EIAR.

The FAC noted that the DAFM recorded a consideration of the application across a range of criteria relevant to the development proposed, including water, soil, terrain, slope, designated areas, landscape and cumulative effects, and determined that the project was not required to undergo EIA. The FAC is satisfied that the range and type of criteria considered is appropriate for DAFM to determine whether an EIAR was required having regard to the nature, scale and location of the proposal.

Conclusion

In considering the appeal, the FAC had regard to the record of the decision and the submitted grounds of appeal and is satisfied that a serious error was made by the DAFM in the making of the decision in this case. The FAC is thus varying the decision of the Minister regarding licence CN85714 in accordance with Section 14B of the Agricultural Appeals Act 2001, as amended, to include the following condition:

The southern section of land extending out from plot 3 to the waterway will be treated as a separate plot and left unplanted or planted with a mixture of at least three native broadleaf species. At least the first three planting rows at the southern and western side of plot 3 to be comprised of native broadleaf species.
Reason: In the interest of visual amenity.

Yours sincerely,

A black rectangular redaction box covering the signature of the official.

Iain Douglas, On Behalf of the Forestry Appeals Committee