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8th July 2021

Subject: Appeal FAC 004/2021 regarding licence CN87116

Dear [REDACTED]

I refer to the 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, as amended, has now completed an examination of the facts and evidence provided by all parties to the appeal.

Background

Licence CN87116 for afforestation of 6.47 hectares of land in Woodlawn Co, Galway was issued by the Department of Agriculture, Food and the Marine (DAFM) on 17/12/2020.

Hearing

A hearing of appeals FAC 004/2021 was held by the FAC on 25th June 2021. In attendance at hearing:

FAC Members: Mr. Donal Maguire (Deputy Chairperson), Mr. Iain Douglas, Mr. Derek Daly and Mr. Vincent Upton.

Secretary to the FAC: Ms. Marie Dobbyn.

Decision

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notice of appeal, submissions received and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister for Agriculture, Food and the Marine regarding licence CN87116.

Overview

The licence pertains to 6.47 hectares of afforestation located in a rural landscape in the townland of Woodlawn, Co. Galway. The predominant soil type underlying the project area is described as being predominantly podzols in nature. The slope of the lands is reported as being flat to moderate, with less than a 15% gradient. The vegetation type within the project area is comprised of rushes and grass. The proposed project lies within the River Sub-Basin's Ahascragh_010 and Raford_010. The River Sub-Basin's Ahascragh_010 and Raford_010 have

approximately 9% and 29% forest cover respectively, which in the former is lower, and in the latter higher than the national average of 11%. At 6.47 hectares this afforestation project was considered by DAFM to be small in scale.

The area proposed for afforestation does not contain, nor is it contiguous to any Recorded Monuments. The nearest such site is a ringfort (GA 086-240) located some 160m to the northeast. The proposed development also falls within the historic demesne landscape of Woodlawn House (NIAH Garden Survey ID: 5408, RPS: 160/161/162), however it does not impact on any designed landscape features associated with this landscape.

The site was subject to a field inspection by DAFM on the 22nd.10.2020. The proposal does not lie within the boundaries of a European site and the DAFM recorded a screening for Appropriate Assessment and identified two European sites within 15km. Each site is considered in turn alongside its qualifying interests/special conservation interests and a screening conclusion and reasons are recorded. The DAFM also recorded a consideration of other plans and projects in-combination with the proposed thinning. The DAFM considered the proposal across a range of criteria and recorded that the proposal should not proceed to Environmental Impact Assessment (EIA). There was one referral to a prescribed body, Galway Co Council and no response was received. Two submissions were received from members of the public and were considered by the DAFM in making their decision. The Appellant submitted one of the submissions, which raised much the same issues and concerns that are detailed in the appeal. The licence was issued with conditions on 17.12.2020.

Appeal

There is one appeal against the decision. The grounds contend that, *"It will affect drainage on our land and devalue land. Our land has good potential for farming. Wildlife will surround our land and possibility of badgers and deer which carry disease. Environmental impact of non-native trees being planted in an area already overcrowded with trees. Stock on our land are at risk of TB. Block out sunlight on our land"*.

In a response to the appeal, the DAFM submitted the dates and steps in processing the application. They submit that the decision was issued in accordance with their procedures, S.I. 191/2017 and the 2014 Forestry Act and that they were satisfied that all criteria outlined in its standards and procedures policy had been adhered to in making a decision on the application. The statement goes on to submit that there is no hydrological connection or obvious threat to any Natura 2000 site.

FAC considerations

The FAC held a hearing to consider the appeal on the 25th.06.2021, the FAC had regard to the record of the decision, the grounds of appeal and any submissions received.

The FAC further considered the record of the decision. Under Article 6(3) of the Habitats Directive, any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with

other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The proposal is for the afforestation of lands. The proposal is not within a European site and is not connected with or necessary to the management of such a site. The FAC consulted publicly available information from the NPWS and EPA and identified the same European sites within 15km. The FAC considered the range and type of plans and projects considered in combination with the proposal and found them acceptable. The FAC considered the reasons recorded for screening the proposal and the decision not to proceed to Appropriate Assessment and did not identify any serious or significant errors.

The proposal lands lie within the River Sub-Basin's Ahascragh_010 and Raford_010. The River Sub-Basin's Ahascragh_010 and Raford_010. The FAC considered that there was no evidence that the proposal would impact on these waterbodies. The FAC also considered the proposed development in the context of the Environmental Impact Assessment (EIA) Directive. 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 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 Forestry Regulations 2017 (S.I. 191 of 2017), 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. At 6.47 ha the proposal is significantly below the threshold for mandatory EIA, The DAFM did undertake a consideration of the proposal across a range of criteria including existing land use, cumulative effect and extent of project, designated and non-designated habitats, archaeology, and landscape and concluded that it should not proceed to EIA. The FAC did not consider that there was any evidence before it that an error had been made in this regard.

The FAC considered the appellant's specific grounds of appeal. With regard to any potential adverse impacts on the drainage of adjoining lands, the FAC noted that no specific evidence had been submitted as to how this might occur. The proposal includes ground preparation through mounding without additional drainage. The land is described as enclosed, agricultural land on mineral soil and is bounded by existing hedgerows and includes scattered mature trees both of which will be retained. The licence conditions require a 5-metre unplanted buffer on all boundaries followed by three rows of birch, a light crowned, deciduous native species. The FAC does not consider that there is any evidence that the proposal as licenced should have a significant detrimental impact on the drainage of adjoining lands.

The appellant raised concerns about the proliferation of wildlife arising from the development and specifically cited badgers and deer as being of concern due to possible disease transmission to domestic livestock. The control of TB is a national issue and the DAFM have policies and

procedures in place that address the issue of possible TB transmission to cattle, and these would pertain in this case. The FAC considered the grounds related to sunlight being blocked by the project and noted that the lands are currently bounded by a hedgerow and a scattering of mature trees. The FAC considered that the licence contained a specific setback provision, requiring 5metres of unplanted land around all boundaries combined with three rows of birch, a light crowned, native, deciduous broadleaf species. The FAC concluded that these measures should mitigate effectively against any significant loss of light and that it was not satisfied that the Minister had erred in this regard.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal, and other submissions received. The FAC is not satisfied that a serious or significant error or a series of errors was made in making the decision or that the decision was made without regard to fair procedures. The FAC is thus affirming the decision to the Minister regarding licence CN87116 in line with Article 14B of the Agricultural Appeals Act 2001, as amended.

Yours sincerely,

A black rectangular redaction box covering the signature of Donal Maguire.

Donal Maguire on behalf of the forestry Appeals Committee