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21st July 2021

Subject: Appeal FAC 862/2020 regarding licence CN80952

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 and Hearing

Licence CN80952 for afforestation of 5.01ha at Cornageeha, Co. Mayo was approved by the Department of Agriculture, Food and the Marine (DAFM) on 24th November 2020. It is noted that the original application was for 6.71ha and included for afforestation in Cornageeha and Cloonainra townlands. In the event the approval was for the afforestation of lands on a stated site comprising 5.01ha in Cornageeha only. A hearing of appeal FAC 862/2020 was held by a division of the FAC on 13th July 2021. The FAC members in attendance at the hearing were Mr. Des Johnson (Chairperson), Mr. Luke Sweetman, and Mr. Seamus Neely.

Following an initial screening of the application by the DAFM a request for additional information was issued to the applicant on 9th August 2018 which sought the submission of a Natura Impact Statement (NIS). This NIS, the request (in summary) stated, should focus on potential impacts on water quality and aquatic species (Salmon, Brook Lamprey, Otter) which are stated to be among the qualifying interests of the River Moy SAC, and to which the site is hydrologically linked. The NIS was to include an assessment of likely sources and pathways (such as relevant watercourses or wet seepage areas) for runoff from the site and the risks of nutrient enrichment or increases in sedimentation of the watercourses assessed. It also set out that potential cumulative impacts need to consider future operations such as felling and extraction of trees from the site. Forest road access (to Plot 1 in particular) needed to ensure no adverse impacts on the aquatic habitat and water quality of the Mullaghanoe River. The NIS, the request stated, will also include details of all mitigation measures and their implementation, that will avoid, or mitigate any such impacts. An ecological assessment of the site itself was also requested to include a description of the habitats and classification following *Fossitt, J.A. (2000) A Guide to habitats in Ireland*. Any habitats with links to Annex I listed habitats under the Habitats Directive were to be described. Habitats were to be shown on a habitat map. The request issued states that the NIS will inform the Appropriate Assessment (AA) which will be undertaken by the Forest Service (DAFM) to determine if there is a likely significant impact from the proposed application on the integrity of the Natura 2000 sites.

The FAC noted that the original application referenced the four plots making up the 6.71ha project area as numbered 1 to 4 from north to south (ie No 1 plot was in Cloonainra to the north of the Mullaghanoe River and subsequently omitted from the approval with plot No 4 being south of the public road). These are the plot numbers as referenced in the Ecological Report as submitted on behalf of the applicant. There is a revised Species Map on file dated 5th October 2018. This map does not include the plot in Cloonainra (ie North of the Mullaghanoe River) and numbered the remaining three plots as 1 to 3 from south to north (ie Plot No 1 is to the south of the public road, plot No 3 is immediately south of and adjoining the Mullaghanoe River and plot No 2 comprises the plot to the south of plot No 3). The FAC understands that the plot numbers as referenced in the DAFM Appropriate Assessment Determination report dated 20th November 2020 and the licence approval are those as shown on the revised Species Map on file dated 5th October 2018.

Decision

Having regard to the evidence before it, including the licence application, processing by the Department of Agriculture, Food and the Marine (DAFM), the grounds of appeal, and all other submissions, the Forestry Appeals Committee (FAC) has decided to affirm the decision regarding licence CN80952.

The licence decision in this case pertains to the afforestation of lands on a stated site area of 5.01ha at Cornageeha, Co. Mayo. The proposed species are Sitka spruce (85%) and Broadleaves (15%). The land is described in the Appropriate Assessment screening documentation (contained in the Inspector's Certification on file) as having a soil type underlying the project area that is predominantly highly modified peat & peaty podzols in nature, as having a slope which is predominantly flat to moderate (<15%) and that the project area is crossed by / adjoins an aquatic zone(s). It is stated that there are some gley soils also on the project area. The project is in the MULLAGHANOE_010 sub-basin and the waterbody has a moderate status assigned to it in the 2013-18 Water Framework Directive assessment period.

The project was referred to Mayo Co. Council, An Taisce and the National Parks and Wildlife Service (NPWS). The response from An Taisce raised matters relating to Appropriate Assessment and requested that the DAFM subject the proposal to Appropriate Assessment for the River Moy SAC. The response from the NPWS outlined the nature conservation observations / recommendations of the Department of Culture, Heritage, and the Gaeltacht and made a more specific reference to the River Moy SAC. No response is to be found on file from the Co Council in this case. There were two submissions made to the DAFM by members of the public in relation to the project. The Inspector's Certification noted that the application was desk assessed, that the site is not acid sensitive, that it is partially within the River Moy SAC, that it is not within a FWPM catchment nor in a Prime Scenic Area as per the County Development Plan and that there are no high amenity considerations. There are no archaeological sites or features on the project lands. Drainage is said to be required, and road access is available. There is approximately 11.22% forest cover within 5kms, there would be no impact on any Way-Marked Way, no impact on any densely populated area, and the area is not commonly used by the general public for recreation.

Ecological Report lodged by applicant

An Ecological Report (the report) marked 'September 2018' was submitted by the applicant in response to the request for additional information issued by the DAFM. The report is based on site investigations carried out on 20th September 2018. It states that its purpose was to define the site in terms of conservation status, habitat type and general composition and to identify any Annex I habitats or Annex II species and to take cognisance of the fact that some Annex species may not be present or easily observed and as such should identify if suitable habitat for the species is present. A methodology for examining the site is described. It sets out that the development is located at between 30-40m OD and consists of afforestation of 6.71ha by adding drains, mounding and planting of conifers by angle notch method in line with Forest Service Guidelines. The site is said to consist of 4 plots on enclosed grassland with immature woodland in the most northerly Plot (1) and is described as low lying, close to the River Moy and is connected to it via the Mullaghanoe River which runs between Plots 1 and 2. Plot 1 hosts blackthorn and willow scrub along with dense bracken and bramble thicket over wet grassland. It states that there are drainage ditches along field boundaries in addition to the watercourse (river Mullaghanoe).

The report examines the site, methods to be employed in the proposal, habitats and species in some detail. It concludes by pointing out that the site encompasses some lands within the River Moy SAC, highlights particular species within it (otter) and while referencing a 50m buffer of the river it indicates that native broadleaves may be planted (in buffer). It also recommends a survey of otter as the project moves to thinning / harvesting stages. It sets out the Qualifying Interests for the River Moy SAC, the Conservation Objectives for the SAC, it considers direct and Indirect Impacts on species and habitats, it considers short, long term, and cumulative impacts. It has a note pointing out that past dredging along the course of the river was likely important to prevent flooding and that this is not to be permitted while stating that flooding likelihood will increase. It sets out that this (flooding) may be tackled in a more natural way by the provision of broadleaves within the Aquatic Buffer Zone. In concluding it states that *'it is thought that the use of Best Practice in conjunction with FS Guidelines with particular emphasis on otter conservation will mitigate against any perceived potential impacts on site'*.

Appropriate Assessment

The DAFM carried out an Appropriate Assessment Screening and identified five sites (River Moy SAC 002298, Lough Hoe Bog SAC 000633, Lough Nabrickkeagh Bog SAC 000634, Ox Mountains Bogs SAC 002006, and Turloughmore (Sligo) SAC 000637) within 15km of the proposal. This assessment is set out in a report dated 20th November 2020. The River Moy SAC 002298 was screened in for Appropriate Assessment and the other four sites were screened out. The reasons for the screening conclusions reached are documented in the report. The report concluded that the project must advance to Appropriate Assessment stage in relation to the River Moy SAC 002298.

An Appropriate Assessment Determination report and Determination (AAD) which is also dated 20th November 2020 is to be found on file and considers the same five sites as the DAFM Appropriate Assessment Screening, records four of the sites as screened out and demonstrates that an Appropriate

Assessment has been done for the other site (River Moy SAC). It sets out that the DAFM requested the applicant to submit a Natura Impact Statement to facilitate the Minister carrying out an Appropriate Assessment and goes on to state that;

“An Ecological Report of proposed development at Cornageeha and Cloonainra, Co. Mayo CN80952 on behalf of Greenbelt for the Forest Service, September 2018 was received on 05.10.2018. Although not entitled a NIS, the Ecological report compiled by Independent ecologist Saoirse O'Donoghue is considered to be equivalent to a NIS. It contains overall a fair and reasonable examination, evaluation and analysis of the likely significant effects of the proposed afforestation activity on the environment, in particular on the River Moy SAC (000007). The report proposed mitigation to avoid any potential adverse impacts”.

The AAD states that on review of the Ecological report, DAFM considered that the planting of conifers (GPC3) within the SAC was not compatible with the conservation objectives of the SAC and recommended additional mitigation measures which are clearly listed in the AAD. The AAD adopts the assessment provided in the Ecology Report and states that the additional mitigation measures (which are listed in the AAD) are to be included as conditions of approval. The AAD sets out that it is considered that the afforestation project CN80952, if managed, operated and controlled in accordance with specific conditions to be attached to the licence (if issued), will not result in the contravention of any relevant environmental quality standards or cause environmental pollution. The AAD acknowledges having considered the application, any subsequent supporting documentation received, written submissions made by public and referral bodies, and the Appropriate Assessment In-combination assessment undertaken by DAFM (12.11.2020).

The Appeal

There is a single appeal against the issue of the licence. The grounds include a reference to the original objection submitted, to contacts with the DAFM during the processing of the application and references the deteriorating quality of water in rivers, submits that changes to the law relating to forestry licencing as being rushed through with no thought for environment, references the Ecological report being accepted as a NIS, queries why DAFM doesn't seek an independent report, references two flooding incidents (Dec 2015 and Feb 2016), submits that fertilizer will (when flooded) wash to river, references an 'active bat population', mentions poor phone signal, and mentions that isolation can lead to depression.

DAFM Statement to the FAC

The DAFM in a statement to the FAC confirmed that the plot north of the Mullaghane River was excluded from the licence approval as adequate access did not exist for it. It sets out that a native woodland plot is to be established within the portion of the site encompassing the SAC and that this extends some 185 metres from the river, it also states that an additional 20 metre buffer is required to adjoin this area which is to be retained for biodiversity or planted with native woodland. Mounding, fertilizer and chemical

application is not permitted within native woodland plots and that there is therefore no risk of fertilizer washing into the river as a result of flooding. It notes that as indicated by the appellant that the photographs submitted with the appeal do not illustrate flooding on the site subject to licence CN80952. The statement sets out that the OPW River Flood Extents high end future scenario indicates that predicted flood events will not exceed the native woodland plot and the adjoining 20 metre buffer zone. It also sets out that an enhanced 75 metre dwelling setback has been applied to dwellings where planting will occur on two or more sides and that this effectively means that there will be an unplanted 0.75ha area in plot 1 to the south of the dwelling and that planting is limited to broadleaf species in plot 2. In addition, five rows of broadleaf species will be planted adjoining the setback.

Consideration by the FAC

The FAC held a hearing of the appeal on 13th July 2021. The Committee considered, in the first instance, if the procedures leading to the making of the decision to grant the licence for the proposed development were consistent with the EIA and Habitats Directives. Regarding Environmental Impact Assessment (EIA) and related matters, 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. The Irish Regulations, in relation to forestry licence applications, require mandatory EIA 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 proposal as described is for the afforestation of 5.01ha and is substantially sub-threshold for the mandatory submission of an EIA report. The FAC found that the DAFM assessed the proposal and considered the application across a range of criteria, including water, designated areas, landscape and cumulative effects, and determined that the project was not required to undergo the EIA process.

Regarding contentions raised relating to the environment / water quality, the FAC reviewed the grounds submitted in the appeal. The FAC finds that the proposal area is separated into two pieces by the public road, is on a gently sloped, enclosed, greenfield site which is bounded on the northern end by the Mullaghanoe River. The FAC also finds that fertilizer is not to be applied within the portion of the site that encompasses the SAC nor in the 20 metre buffer immediately south of same. This means that there will be no fertilizer applied within that portion of the site that lies within 205 metres of the river. The publicly available EPA maps confirm the proposal area is in the MULLAGHANOE_010 sub-basin and the waterbody has a moderate status assigned to it in the 2013-18 Water Framework Directive assessment period. The AAD sets out that the conditions under which the proposal will be undertaken will ensure no impacts on Natura 2000 sites, on biodiversity and water quality where it states on page 4; *"The mitigation detailed below (in the AAD) will ensure no adverse impacts on the Natura 2000 sites and will protect and enhance local biodiversity and water quality"*. These mitigations include specified setbacks for each plot comprising the project area and that there would be no drainage permitted on the site nor would there be any cleaning of existing drains / relevant watercourses.

The FAC noted that the Ecological report submitted by the applicant, among other matters, considered the issue of potential flooding on the project area and set out an approach to dealing with same. The matter of flooding is also addressed by the DAFM in its processing of the application and as set out in its statement to the FAC. The FAC consulted flood risk assessment mapping on the OPW public website and concluded that the information contained corresponded with the DAFM findings as it relates to flooding risks in this case. Having regard to the record of the decision, the submitted grounds of appeal, the nature, scale and location of the proposal and the conditions under which the project is to be carried out, the FAC is not satisfied that the proposal would result in any likelihood of significant effects on the environment or on water quality.

Regarding Appropriate Assessment and related matters, the FAC finds that following an initial screening of the proposal the DAFM made a request to the applicant for additional information which sought the submission of a Natura Impact Statement (NIS). In response an Ecological Report (the report) marked 'September 2018' was submitted by the applicant which was based on site investigations carried out on 20th September 2018. There is a confirmation on file that the DAFM considered this report to be equivalent to a Nature Impact Statement. The FAC finds that the report submitted by the applicant addresses the scope set out in the DAFM request. The FAC also finds that the DAFM carried out a screening for Appropriate Assessment (20th November 2020) which identified five Natura sites (River Moy SAC 002298, Lough Hoe Bog SAC 000633, Lough Nabrickkeagh Bog SAC 000634, Ox Mountains Bogs SAC 002006, and Turloughmore (Sligo) SAC 000637) within 15km of the proposal. The River Moy SAC 002298 was screened in for Appropriate Assessment and the other four sites were screened out. The reasons for the screening conclusions reached are to be found in the Appropriate Assessment Screening (AAS) report on file. The AAS concluded that the project must advance to Appropriate Assessment stage in relation to the River Moy SAC 002298.

The FAC finds that an Appropriate Assessment Determination report and Determination (AAD) dated 20th November 2020 is on file and considers the same five sites as the DAFM Appropriate Assessment Screening, records four of the sites as screened out and demonstrates that an Appropriate Assessment has been done for the other site (River Moy SAC). It sets out that the DAFM requested the applicant to submit a Natura Impact Statement to facilitate the Minister carrying out an Appropriate Assessment and records that an *'Ecological Report of the proposed development'*, which it considers to be equivalent to a Natura Impact Statement, was received on 5th October 2018. The DAFM confirm that the report *'contains overall a fair and reasonable examination, evaluation and analysis of the likely significant effects of the proposed afforestation activity on the environment, in particular on the River Moy SAC (000007)'* and that the report proposed mitigation to avoid any potential adverse impacts. The AAD adopts the assessment provided in the Ecological Report, with the additional mitigation measures (which are listed) to be included as conditions of approval. The AAD sets out that it is considered that the afforestation project CN80952, if managed, operated and controlled in accordance with specific conditions to be attached to the licence (if issued), will not result in the contravention of any relevant environmental quality standards or cause environmental pollution. The AAD acknowledges having considered the application, any subsequent supporting documentation received, written submissions made by public and referral bodies, and the Appropriate Assessment In-combination assessment undertaken by DAFM (12.11.2020).

The FAC examined publicly available information from the NPWS and EPA and identified the same five Natura 2000 sites. The FAC considered that the DAFM had sufficient information in respect of the characteristics of the proposal, the location, and types and characteristics of potential impacts, to determine the likely significant effects of the proposal itself or in combination with other plans and projects on a European site. The FAC considered that the procedures adopted by the DAFM in their assessment are considered acceptable. Based on the information available to it, the FAC is not satisfied that a serious or significant error or series of errors were made in the making of the decision regarding Appropriate Assessment in this case and concurs with the conclusions reached.

In relation to the potential impacts on the appellant's house arising from the proposal the FAC noted that the licence provides for an enhanced 75 metre dwelling setback which applies to dwellings where planting will occur on two or more sides. The DAFM have confirmed that this effectively means that there will be a 0.75ha unplanted area in plot 1 which is to the south of the appellants dwelling and that planting is limited to broadleaf species in plot 2. In addition, five rows of broadleaf species are to be planted adjoining the setback. In these circumstances, the FAC concluded that there was no significant or serious error in the making of the decision by the Minister to grant the licence for the proposed development as it relates to potential impact on dwellings.

In considering the appeal in this case the FAC had regard to the record of the decision, the submitted grounds of appeal, and all submissions received. The FAC concluded that no significant or serious error, or series of errors, was made in the making of the decision to grant the afforestation licence CN80952, and that the decision was made in compliance with fair procedures. In deciding to affirm the decision of the Minister in this case, the FAC considered that the proposed development would be consistent with Government policy and Good Forestry practice.

Yours sincerely,


Seamus Neely On Behalf of the Forestry Appeals Committee

