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28th July 2021

Subject: Appeal FAC 039/2021 regarding licence CN87315

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

Background and Hearing

Licence CN87315 for afforestation of 5.69 ha at Dunbeacon, Co. Cork was approved by the Department of Agriculture, Food and the Marine (DAFM) on 25th January 2021 subject to a number of standard conditions in addition to specific conditions such as not to plant willow, to adhere to forestry & archaeology guidelines, that the western portion of the area proposed for afforestation (as demarcated in yellow with red hatching on a map attached to the licence) should be excluded from the proposed development. A hearing of appeal FAC 039/2021 was held by a division of the FAC on 19th July 2021. The FAC members in attendance at the hearing were Mr. Myles Mac Donncadha (Chairperson), Mr. James Conway, Mr. Seamus Neely and Mr Derek Daly.

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, all materials on file, and in particular the following considerations, the Forestry Appeals Committee (FAC) has decided to set aside and remit the decision of the Minister regarding licence CN87315.

General

The licence decision in this case pertains to the afforestation of lands on a stated site area of 5.69 ha at Dunbeacon, Co. Cork. The proposed species are Pedunculate oak (30%), Birch (30%), Common alder (20%), and Additional Broadleaves (20%). The land is described on the file as having a soil type underlying the project area that is predominantly mineral and is an exposed enclosed project area with a neutral aspect. The vegetation on site is described as grass, grass rush, bracken/briar, and furze. The proposal is for woody weed removal, mounding, standard stocking and angle notch planting. The pre-approval status on file shows that drainage and firebreaks are not required and that there will not be any fertilizer applied.

The Inspectors Certification on file shows that the application was desk and field assessed. It also shows that the site is not prone to flooding and is free of shell marl or highly calcareous soil, is not acid sensitive, is not within NHA, pNHA, SAC, SPA or National Park, is not within FWPM 6 km zone or catchment, is not in a Prime Scenic Area as per the County Development Plan and has no high amenity considerations. The certification document also shows that the project area is not within an area which is sensitive for fisheries, is not within a hen harrier zone, is within a National Parks and Wildlife Service referral zone (however the narrative on the file indicates that it is not within such a referral zone), that the area contains or adjoins a listed archaeological site or monument, and that there would be manual herbicide control (year 0 & year 1). The certification sets out that road access is provided and that the site has a slope which is predominantly flat to moderate and is not crossed by/adjoins an aquatic zone.

The site is in the DRISHANE_010 Sub Basin and the waterbody has an unassigned status. The Inspectors certification records that there are no aquatic zones on site and the FAC noted that the Drishane river is in excess of 1km from site at the nearest with no apparent hydrological connections visible on the mapping for the area. The contours of the site suggest that the site slopes and drains predominantly towards the sea. The application was referred to the National Monument Service having regard to the archaeological considerations adjacent to or near the site. The file indicates that there were no submissions made to the DAFM by members of the public in relation to the project. According to the Inspectors Certification document on file there is approximately 9.41% forest cover in the townland, approximately 7.82% forest cover within 5kms, and approximately 4.21% forest cover within the underlying waterbody. 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.

Appropriate Assessment

The DAFM carried out an Appropriate Assessment Screening and identified nine Natura 2000 sites (Barley Cove To Ballyrisode Point SAC 001040, Caha Mountains SAC 000093, Dunbeacon Shingle SAC 002280, Farranamanagh Lough SAC 002189, Glengarriff Harbour And Woodland SAC 000090, Reen Point Shingle SAC 002281, Roaringwater Bay And Islands SAC 000101, Sheeps Head SAC 000102, and Sheeps Head to Toe Head SPA 004156) within 15km of the project area. Each site is found to be examined in turn together with its qualifying interests (which were listed in each case) & conservation objectives and supporting habitats & species (as relevant). All nine sites were screened out and the reasons for the screening conclusions reached for each site are recorded in the screening documentation on file.

Archaeology considerations.

The application was referred to the DAFM archaeologist who developed a number of conditions for potential inclusion in the licence and these were referred to the National Monument Service for approval. The National Monument Service responded agreeing with the position recommended by the DAFM as it related to the proposals developed for inclusion in the licence. These proposals, which were summarised in the DAFM email to the National Monument Service of 19th November 2020, set out that the area proposed for afforestation is located in a coastal cliff-top location, that the nearest Recorded Monument is a Promontory Fort containing a Souterrain with an unlocated Ogham Stone reported by Westropp nearby (CO130-024001/2/3), located some 65m to the north. It also set out that to the

southwest is Dunbeacon Tower House and Promontory Fort as well as the site of a coastal Midden reported by Westropp (CO130-025001/2/3). The western portion of the area proposed for afforestation, it stated, is in the area between the two Promontory Forts and that in addition, it is contiguous to the coastline in an area where Middens have been recorded as a result of coastal erosion. The email then went on to set out what the recommendation was in this case and is as follows;

- a) The western portion of the area proposed for afforestation, as demarcated in yellow with red hatching on the accompanying map should be excluded from the proposed development in order to protect the landscape setting of the monument, to maintain a visual line-of-sight between the two Promontory Forts in the area and owing to the elevated archaeological potential as a result of the known coastal Midden sites in the wider area.
- b) In addition, a structured programme of archaeological monitoring is also required for all ground preparation and drainage works in the remaining portion of the area proposed for afforestation, as demarcated in pink on the accompanying map, owing to the elevated potential for sub-surface archaeological features.

In the event, these proposals were included as conditions of the licence as issued on 25th January 2021.

In-Combination Report

An In-Combination report is on file which indicates that it relates to project CN87315 and sets out that the potential for the proposed project to contribute to an in-combination impact on European sites was considered by the Department of Agriculture, Food & the Marine (DAFM). It indicates that various online planning systems and datasets (including DAFM's own internal records) were consulted on the 08/12/2020, in relation to other plans and projects, focusing on the general vicinity of the project area in the River Sub-Basin Laney_010. The report includes a project specific statement that states that this project lies in a rural landscape in Carrigagulla Co Cork in the River Sub-Basin Laney_010, that the River Sub-Basin Laney_010 has approximately 48% forest cover, which is higher than the national average of 11%. It also states that at 450 metres the project is considered medium in scale. The FAC finds that the project CN87315 lies within a different Water Framework Directive sub-basin to that quoted in the in-combination report, that the projects listed in same seem to be for a different area to project CN87315 and that this project is for an afforestation proposal and not for a road project as indicated in the in-combination report. The FAC considered this to be an error in the processing of the application.

The Appeal

There is a single appeal (1st Party) against the issue of the licence which in essence is against the extent of the exclusion as applied by the DAFM in this case. The full grounds of appeal have been considered by the FAC and are to be found on file. The appeal grounds are summarised below;

- Appeals the exclusion of planting on the yellow and red hatched area as marked on a map issued with the licence,
- Contends that there is no line of sight at present between the two sites of archaeological significance in this case,

- Submits that planting this area would not obstruct a view that is already obstructed by a hill,
- Submits that OS mapping shows Doona Fort to be above sea level and that Dunbeacon Castle is also at 5m,
- Submits that there is a hill which at highest is at about 18m/19m and submits that this shows there is no line of sight presently.

DAFM Statement to the FAC

The DAFM in a statement to the FAC confirmed that the decision was issued in accordance with DAFM procedures, S.I. 191/2017 and the 2014 Forestry Act. It also sets out the various processing dates relating to the application and that no submissions had been received from members of the public. The statement also includes a response to the appeal.

Consideration by the FAC

The FAC held a hearing of the appeal on 19th 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 5.69ha 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.


Addressing the written grounds of appeal, the FAC considered that these in effect are against the extent of the exclusion as applied by the DAFM in its processing of the licence. The FAC finds that the application was referred to the DAFM archaeologist who developed a number of conditions for potential inclusion in the licence and these were agreed with the National Monument Service and included as conditions of the licence issued. The FAC noted that the effect of these archaeological conditions is that a portion of the project area (which is marked on a map that issued with the licence) is excluded from the approval and that this exclusion is appealed by the applicant as a 1st party appellant. The FAC, in considering the written grounds of appeal noted the lengthy response to the appeal from the DAFM archaeology unit wherein it set out a robust defence of the exclusion. The FAC noted that this response referenced that the 'excluded' area remained potentially eligible in whole or in part as unplanted ABE / Open Space. The FAC also noted the DAFM submission in the archaeologist's response that afforestation in the area around the monument would dramatically alter the landscape setting which is central to the amenity of these monuments. The FAC concluded that there were archaeological considerations

necessitating the exclusion in this case that went beyond the maintenance of a line of sight between the two locations while noting the emphasis placed within the archaeologist's response to the 'line of sight from the location' of the monuments as opposed to the 'monuments themselves'. The FAC considered that there was no convincing submission in the appeal grounds as submitted to demonstrate that the DAFM had erred in its processing of the licence as it related to the excluded area.

Regarding Appropriate Assessment and related matters, the FAC finds that the DAFM carried out an Appropriate Assessment Screening and identified nine Natura 2000 sites within 15km of the project area. Each site is found to be examined in turn together with its qualifying interests and all nine sites were screened out and the reasons for the screening conclusions reached for each site are recorded in the screening documentation on file. While the FAC examined publicly available information from the NPWS and EPA and identified the same nine Natura 2000 sites as the DAFM, it noted that the DAFM in-combination report and statement has been prepared having regard to an incorrect location for the project (ie Carrigagulla, Co. Cork, in the River Sub-Basin Laney_010, whereas the project CN87315 is at Dunbeacon, Co. Cork, and is in the Sub-Basin DRISHANE_010). The FAC concluded that this represented a serious error in the processing of the application and decided that a new screening of the proposal itself and in combination with other plans or projects under Article 6 of the EU Habitats Directive is required and should be undertaken regarding this proposal.

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 is satisfied that a serious or significant error or a series of errors were made in making the decision in relation to this licence and is therefore setting aside and remitting the decision regarding licence CN87315 to the Minister to carry out and record a new screening of the proposal itself and in combination with other plans or projects under Article 6 of the EU Habitats Directive, before a new decision is made.

Yours sincerely,


Seamus Neely On Behalf of the Forestry Appeals Committee

