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28th July 2021

Subject: Appeal FAC 089/2021 regarding licence CN87376

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 CN87376 for afforestation of 2.59ha at Knockaskeheen, Co. Clare was approved by the Department of Agriculture, Food and the Marine (DAFM) on 15th April 2021. It is noted that the original application was for 6.44ha, that a portion of the original project area was excluded from the approval of the licence and that the licence issued is for 2.59ha GPC3 as marked on a map attached to it. The approval is dated 15th April 2021 and is subject to standard conditions 1 – 4 in addition to the following:

- Adhere to the hedgerow setbacks as appropriate. Adhere to waterway setbacks as appropriate.
- Some of the area proposed has been excluded due to concerns about encroachment of existing dwellings.
- The fencing requirement is 438m along the planted tree line.
- Adhere to forestry & water quality guidelines.

A hearing of appeal FAC 089/2021 was held by a division of the FAC on 21st July 2021. The FAC members in attendance at the hearing were Mr. John Evans (Chairperson), Mr. Vincent Upton, Mr. Iain Douglas, and Mr. Seamus Neely.

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 submissions received, and in particular the following considerations, the Forestry Appeals Committee (FAC) has decided to affirm the decision regarding licence CN87376.

General

The licence decision in this case pertains to the afforestation of lands on a stated site area of 2.59ha at Knockaskeheen, Co. Clare. The proposed species are Sitka spruce (85%) and Broadleaves (15%). The land is described on the file as having a soil type underlying the project area that is predominantly podzolic in nature, as having a slope which is predominantly flat to moderate (<15%), that the vegetation is grass, grass rush, bracken/briar and furze, with road access available. The proposal is for woody weed removal, mounding, slit planting, a standard stocking and fertilizer at the rate of 250kg GRP per hectare is to be applied. The file indicates that fire breaks and drainage is not required.

The Inspectors Certification on file shows that the application was desk assessed (the FAC noted that elsewhere in the file it was evident that the application was also field assessed on 22/10/2020), 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 a NHA, pNHA, SAC, SPA or National Park, is not within Fresh Water Pearl Mussel 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 not within a National Parks and Wildlife Service referral zone, that there are no archaeological sites or features on the project area, and that there would be manual herbicide control (year 1). The FAC noted that question 10 (Assessment to Determine EIA Requirement) regarding 'cumulative effect' was marked N/A in the certification however the FAC finds that this was referenced in the DAFM statement to the FAC wherein it stated that the correct answer to this question in this case is 'No'. The project is in the Aille (Clare) _010 Sub Basin and the waterbody is poor, is at risk and forestry is listed as a pressure. The Inspectors Cert records that the site is crossed by an aquatic zone. The Aille (Clare) river runs adjacent to the eastern boundary of the site at some 50m – 60m distance.

The project was referred to Clare Co. Council and An Taisce and no response is to be found on file from either referral body in this case. There was one submission made to the DAFM by a member of the public in relation to the project (with a follow up also on 22/10/2020) which raised concerns regarding impacts on their dwelling, residential amenity and the site notice. A letter is on the record from the DAFM to the Applicant and their Agent dated 4th March 2021 and requested the re-erection of the site and requesting amendments to address proximity to a dwelling. According to the Inspector's Certification document on file there is approximately 26.56% forest cover in the townland at present, approximately 19.55% forest cover within 5km, and approximately 15.92% 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 ten Natura 2000 sites (Ballyteige (Clare) SAC 000994, Ballyvaughan Turlough SAC 000996, Black Head-Poulsallagh Complex SAC 000020, Cliffs of Moher SPA 004005, East Burren Complex SAC 001926, Galway Bay Complex SAC 000268, Inagh River Estuary SAC 000036, Inisheer Island SAC 001275, Inner Galway Bay SPA 004031, and Moneen Mountain SAC 000054) 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 ten sites were screened out and the reasons for the screening conclusions reached for each site are recorded in the screening documentation on file.

In-Combination Report

An In-Combination report is on file which sets out that in relation to CN87376, 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). Various online planning systems and datasets (including DAFM's own internal records) were consulted on the 13/04/2021, in relation to other plans and projects, focusing on the general vicinity of the project area in the River Sub-Basin Aille (Clare)_010. The report was completed on 13/04/2021 and includes a project specific statement relating to CN87376.

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 its processing of the licence. The appeal appears to take the form of an alternative proposal to the detail of the decision made by the DAFM as it relates to setback / land excluded and has been submitted as follows;

- 60 metre clear setback from house then 10 rows of Native Broadleaves along plot 2,
- No Sitka spruce within 80 metres of house,
- Plant a plot of native broadleaves from road to existing trench (relevant watercourse),
- Plot 2 and plot 3 to be planted with birch, rowan, holly, hawthorn and oak.

The FAC requested clarification from the Appellant on the matter and is satisfied that what is contained in the grounds of appeal represents an alternative design of the proposal by the licence Applicant.

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 a submission had been received from a member of the public. In relation to the appeal grounds the statement includes a detailed response which confirms that the site was inspected on the 22/10/2020, that there were concerns about the encroachment of trees and forests around the inhabited dwelling at the northern boundary of the site whereby the dwelling would be surrounded on 3 sides by the proposal, and that there is also the existence of a grove or tall Sitka Spruce across the road from the dwelling (to the north). It states that even with a 60m setback it was felt that the proposal would have a negative effect on the dwelling and that it was decided to exclude part of the site so that the applicant will have some land to plant and the concerns relating to the submission on the matter will also be somewhat given due regard. The statement sets out that the site is not suitable for broadleaves, that there is a very heavy growth of rushes on a peaty muddy wet mineral soil with water logging in areas and that the altitude is 140-150m above sea level with a south westerly aspect. It states that the hedgerows in the vicinity do not support the prolific growth of broadleaves due to the exposure. The appellant's offer

of planting a 20m wide swath of holly and hawthorn is noted on the statement and it is recorded that the DAFM consider that these species will struggle on this land. It references the Appropriate Assessment screening done and that all Natura 2000 sites were screened out. It deals with Question 10 on the certification page (as referenced earlier in this letter) and confirms that the answer to same is “No”.

Consideration by the FAC

The FAC held a hearing of the appeal on 21st 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 2.59ha 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 Appropriate Assessment and related matters, the FAC finds that the DAFM carried out an Appropriate Assessment Screening and identified ten Natura 2000 sites within 15km of the project area. Each site is found to be examined in turn and all ten sites were screened out. The FAC finds that the reasons for the screening conclusions reached for each site are recorded in the screening documentation on file. The FAC examined publicly available information from the NPWS and EPA and identified the same ten 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. 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 dwelling of the member of the public who made a submission to the DAFM in relation to this application the FAC noted that the licence provides for an enhanced setback applied through the licence as an exclusion of a significant portion (3.85ha approximately of the area originally applied for) of the project area and that the net area approved for planting is 2.59ha. The FAC also noted that the planting as originally proposed would have resulted in the said dwelling having planting on three sides with further existing forests to the north and northwest of the property. In this context the FAC considered and had regard to DAFM’s *‘Environmental Requirements for Afforestation December 2016’* which deals with the question of setbacks, including for utilised farm buildings and dwellings. The FAC

finds that the Environmental Requirements for Afforestation December 2016 sets out at page 27 that *'Setback distance is most critical when a building is surrounded by forest on two or more sides'*.

Addressing the written grounds of appeal, the FAC considered that these in effect are contrary to the extent of the exclusion as applied by the DAFM in its processing of the licence. The FAC noted that in a letter to the Applicant on 4th March 2021 the DAFM requested the following;

'Furthermore the dwelling adjoining the site will be totally surrounded by Spruce unless the setback is increased. Propose an increased setback to alleviate this problem'.

The record does not contain a response to this matter and the Applicant does not appear to have submitted an amended proposal to the DAFM to address the identified issues or any further communication on the matter. The FAC finds that the DAFM's Environmental Requirements for Afforestation December 2016 specifies a 60m setback from dwelling houses, or 30m with the written consent of the owner, unless otherwise agreed between the applicant and the owner of the dwelling. For public roads there is a requirement for a 20m setback for Conifer plantations, with 10m unplanted setback from the edge of the carriageway, and then 10m of Broadleaves or groups of Broadleaves, before the first row of Conifers. The FAC noted that the Environmental Requirements for Afforestation December 2016 allows for increased setbacks for landscape reasons and that setback distance is most critical when a building is surrounded by forest on two or more sides. In this case the DAFM have noted that the planting as originally proposed would result in the dwelling impacted by this proposal having planting on three sides and invited the Applicant to make a proposal to address the matter which does not appear to have been pursued by the Applicant. In the absence of alternative setbacks as requested, the DAFM proceeded to address the matter through the imposition of extended unplanted setbacks from the dwelling adjoining the property. 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 relates to setbacks / exclusions and the decision as issued.

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 it was not satisfied that a significant or serious error, or series of errors, was made in the making of the decision to grant the afforestation licence CN87376, or that the decision was made without 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

