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31st May 2021

Subject: Appeals FAC286/2020 in relation to afforestation licence CN85981

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.

Background

Afforestation licence CN85981 was issued by the Department of Agriculture, Food and the Marine (DAFM) on the 22nd May 2020.

Hearing

A hearing of appeal FAC286/2020 was held by the FAC on the 27th May 2021:

FAC Members - Mr Des Johnson (Chairperson), Mr Dan Molloy, Mr Iain Douglas & Mr Luke Sweetman

FAC Secretary - Mr Michael Ryan

Decision

The FAC considered all of the documentation on the file, including application details, processing of the application by the DAFM, the grounds of appeal, and all other submissions, before deciding to affirm the decision to grant afforestation licence CN85981.

This licence is for the afforestation of 6.15ha and erection of 735m of Rabbit/stock fencing in Derryhall, Co. Westmeath. The DAFM Inspector's Certification states the underlying soil type is predominately Podzols. The slope is predominantly flat to moderate (<15%), the existing vegetation cover is comprised of grasses and the project area does not adjoin or contain an aquatic zone(s). The proposed planting is in three plots; GPC 6 (90% Pedunculate oak, 9% Additional Broadleaves, 6% Scots pine) in Plot 1 and GPC4 (100% Scots pine) in Plot 2 and Plot 3. Ground preparation will be ripping, no drainage is required, and no fertiliser or herbicide will be applied. Slit planting and manual vegetation control are proposed.

The proposal is in the 25A Lower Shannon Catchment, the Brosna_SC_030 Sub-Catchment, and the Ballynagrenia Stream_020 River Sub-Basin. The Ballynagrenia Stream_020 Waterbody was assigned 'Good' status and deemed to be 'Not at Risk' under the Environmental Protection Agency (EPA) 2013-2018 reporting period. The EPA-mapped Ballybrickoge Stream rises to the south-east of the proposal and flows approximately parallel to the southern boundary at a distance of c. 150m. There is no evidence of any drains or watercourses exiting the project lands.

The Inspector's Certification document indicates that the site is located in an area that is not acid sensitive or sensitive for fisheries and not within a Freshwater Pearl Mussel 6km Zone. The Applicant's Forester states that the application site is not prone to flooding and is free of shell marl or highly calcareous soils and the DAFM Inspector answers 'Not Applicable' to both of these questions. The proposal is not within 3km upstream of an NHA, pNHA, SAC, SPA, or National Park and does not contain or adjoin an archaeological or national monument site. The site is not within a Prime Scenic Area as per the County Development Plan but is within a High Amenity Landscape. The approximate percentage forestry cover in the Townland is 14.52% and 4.46% within 5km of the application area at present. The Inspector's Certification states that the application, together with new afforestation of three years or less within 500m is 27.45ha. The application together with other Form 1 (Pre-Approval) applications within 500m and approved but not yet planted is 6.15ha. The percentage of forest cover currently in the underlying Waterbody is 8.07%.

The application was submitted along with associated maps and was referred to Westmeath Council with no response. In processing the application, the DAFM completed a Stage 1 Appropriate Assessment (AA) Screening which screened the following seven European sites within 15km of the proposal: (i) Ballymore Fen SAC, (ii) Carn Park Bog SAC, (iii) Crosswood Bog SAC, (iv) Lough Ennell SAC, (v) Lough Ennell SPA, (vi) Split Hills And Long Hill Esker SAC, (vii) Clara Bog SAC. All seven sites were screened out for Stage 2 AA due to "the position of the project area downstream from the Natura site and the subsequent lack of any hydrological connection." In the case of Clara Bog SAC the reason for screening out was not contained in the Inspector's Certification document but is recorded within the 'Notes' section of iFORIS. The DAFM also considered the potential for the project to contribute to an in-combination impact on European sites. Various planning websites were consulted along with the DAFM's internal records for other plans and projects, focusing on the general vicinity of the project area in the River Sub Basin (Ballynagrenia Stream_020). The DAFM concluded that the proposed development, when considered in combination with other forestry and non-forestry plans and projects, "will not give rise to the possibility of an effect on the Natura site(s) listed above."

The DAFM issued the licence on the 22nd May 2020 with relatively standard conditions 1 - 12 and no additional conditions.

There is one appeal against the licence. The written grounds of appeal were considered in full by the FAC and are summarised below:

FAC286/2020 –

- The decision does not comply with the Habitats, Birds and EIA Directives.
- There is no need to establish a significant effect to trigger AA - it is merely necessary to determine that there may be a significant effect.
- If the development is within 15km of a Natura site it has been screened in.
- It is not appropriate at screening stage to take account of measures intended to avoid or reduce the harmful effects on a European site.
- The assessment carried out in accordance with the provisions of the Habitats Directive must not have lacunae and must be capable of removing all reasonable scientific doubt as to the effects on a European site.
- The catchment the proposed development is in should be stated.
- A map showing all relevant SACs and SPAs should be submitted.
- Details of all forestry operations in the area should be listed to see if the cumulative forestry exceeds 50ha. Also necessary to give total km's of forest roads in the area and show that no

roads that are not included in the application will be needed to carry out this development – including thinning and clearfell.

- There is a duty on the FAC to carry out a full screening under the Habitats and EIA Directives.
- There is an obligation on the FAC, as a public authority, to comply with all European Directives.

The DAFM provided a written response to the grounds of appeal in the form of a Statement of Facts to the FAC: “It is planned to rip this project area and stock it with native species. No drainage is required and there is no hydrological connection to any watercourse. This project is outside the commuting range for the Qualifying Interests of associated Natura designations. No effect from this project is expected.”

The FAC held a Hearing on the 27th May 2021 to consider appeal FAC286/2020. The FAC noted that a number of the grounds of appeal are related to the obligations and functioning of the FAC and are not grounds related to the decision of the DAFM to grant afforestation licence CN85981.

The FAC considered the appellant’s submission that the decision does not comply with the Habitats, Birds and EIA Directives. Regarding the EIA Directive, the FAC noted that the proposal was assessed by the DAFM to determine the requirement for EIA using the Inspector’s Certification process in iFORIS. The DAFM considered the nature and scale of the proposal and its potential to have an impact on the environment across a range of criteria including, inter alia, an assessment of potential effects on water quality, designated sites, protected species, archaeological and landscape considerations, and the amount of existing forest cover and approved afforestation in the immediate surrounds of the proposal and within the underlying Waterbody. The FAC noted the presence on the Bio Map and the EPA imagery of what appears to be seasonal groundwater flooding to the east of the project lands. There is no evidence of hydrological connectivity between the proposal and this potential aquatic zone. The FAC noted that the planned afforestation will have no fertiliser or herbicide applied and the ground will be ripped prior to planting rather than have mound drains installed. Based on the evidence before it, the FAC concluded there is no potential for the proposed development to have any deleterious effect on water quality. The proposal, for 6.15ha of afforestation, is considerably sub-threshold for mandatory EIA under Irish Regulations where the threshold for such mandatory assessment is set at 50ha. Having considered the documentary evidence submitted by the DAFM and having regard to the nature and scale of the proposal, the location, the type and characteristics of potential impact, and the screening procedures followed by the DAFM before concluding that an EIA is not required in this case, the FAC is satisfied that the DAFM had adequate information before it to enable a preliminary screening for EIA and concurs with the DAFM’s conclusion in this regard.

In regard to the appellant’s submission related to the Habitats Directive, the FAC considered the AA procedures adopted by the DAFM in processing this licence application. The DAFM completed a Stage 1 AA Screening of European sites within 15km of the proposal and all seven sites were screened out for Stage 2 AA due to the position of the project area downstream from the European sites, and the subsequent lack of any hydrological connection. The DAFM’s written submission to the FAC also states that the proposal is “outside the commuting range for the Qualifying Interests of associated Natura designations.” The FAC reviewed publically available information on the EPA website and noted that there is only one European site, Split Hills and Long Hill Esker SAC, within the same Sub-Catchment as the proposal and that the proposal is downstream from the SAC and no source-receptor pathway exists. Based on the evidence before it, the FAC is satisfied that the DAFM’s approach is in line with the requirements of the Habitats Directive and the FAC considers the conclusion reached by the DAFM in regards to AA Screening to be sound.

In relation to the Birds Directive, the FAC noted the appellant did not specify which element(s) of the Birds Directive they contend the decision to grant afforestation licence CN85981 does not comply with. There is no evidence before the FAC in respect of the existence of wild birds likely to be affected by the proposed development. In these circumstances, the FAC concludes there is no related reason on which to affect the decision.

The FAC considered the appellant's other grounds of appeal related to AA. The FAC considers that European sites should only undergo AA as a result of a Stage 1 Screening procedure and does not consider that the location of a European site within 15km of a proposed development necessitates that site being screened-in for Stage 2 AA as contended by the appellant. The FAC noted that the AA Screening lists the European sites (including site codes) which were screened for AA and does not consider it a necessary requirement that these sites be shown on a map. The FAC considered that there is no evidence before it to indicate that the DAFM took into account, at screening stage, measures intended to avoid or reduce the harmful effects on a European site.

Based on the information before it, as outlined above, the FAC is satisfied that the DAFM did not make a serious or significant error, or series of errors, in deciding to issue CN85981 and did so in compliance with fair procedures. In deciding to affirm the decision of the Minister, the FAC considered that the proposed development is in line with Government policy and good forestry practice.

Yours sincerely,

A black rectangular redaction box covering the signature of Luke Sweetman.

Luke Sweetman on Behalf of the Forestry Appeals Committee