



An Coiste um
Achomhairc
Foraoiseachta
Forestry
Appeals
Committee

[REDACTED]
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May 31st 2021

FAC ref: FAC689/2020

Subject: appeal in relation to Licence FAC689/2020, CN86369

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 CN86369 was granted by the Department of Agriculture, Food and the Marine (DAFM) on August 18th 2020.

Hearing

An oral hearing of appeal FAC689/2020 regarding the decision to issue the licence CN86369 was conducted by FAC on May 6th, 2021.

Attendees:

FAC:	Mr Des Johnson (Chairperson) Mr Derek Daly, Mr Iain Douglas, Mr Dan Molloy.
Administrative Secretary:	Mr Michael Ryan.
DAFM Representatives:	Martin Regan, Mary Coogan
Applicant representatives:	Did not attend.
Appellant:	[REDACTED] did not attend.

An Coiste um Achomhairc
Foraoiseachta
Forestry Appeals Committee

Kilminchy Court,
Portlaoise,
Co Laois
R32 DWT5

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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, submissions made at the Oral Hearing and all other submissions, before deciding to affirm the decision of the Minister regarding Licence CN86369.

The proposal is for the Afforestation of 1.41 hectares and 370m of fencing at Ardakup More, Dromahair, County Leitrim. In line with details as provided by the DAFM, the soil type underlying the project area is predominantly brown earths in nature. The slope is predominantly flat to moderate (<15%). The project area does not adjoin or contain an aquatic zone. The vegetation types within the project area comprise grass/rush. The approximate forest cover within the townland is 8.2% and the approximate forest cover within a radius of 5km is 17.85%. The area does not contain a listed archaeological site or monument. The River Sub Basin Kilanummery_20 has approximately 18% forest cover which is higher than the national average of 11%.

The site is located within the Bonnet _Sub Catchment_20 _ and WFD Catchment 35 Sligo Bay.

The Applicant submitted an application pack which includes Pre Approval Submission, Bio maps, fencing maps and site notice. There were no referrals to outside bodies.

The DAFM carried out Appropriate Assessment Screening (AAS) on twelve Natura 2000 sites within a 15km radius of the site. All twelve sites, Ballysadare Bay SAC, Ballysadare Bay SPA, Ben Bulbin, Gleniff And Glenade Complex SAC, Boleybrack Mountain SAC, Cummeen Strand SPA, Cummeen Strand/Drumcliff Bay (Sligo Bay) SAC, Lough Arrow SAC, Lough Arrow SPA, Lough Gill SAC, Sligo/Leitrim Uplands SPA, Union Wood SAC and Unshin River SAC, were screened out for reasons of the absence of any aquatic zone within or adjoining the project area and the absence of any significant relevant watercourse(s) within or adjoining the project area.

The DAFM consulted the following agency websites as part of the in-combination report, the Department of Housing, Planning and Local Government, which listed , Domestic dwellings (4) Forest entrances (1), Forest road (1) Livestock slatted accommodation (1). An Bord Pleanála website, no applications, EPA website, no applications. DAFM internal records were also consulted on the week of July 28th 2020 - the following forestry projects were identified, Afforestation projects, nine (2015 – 2019), Forest roads, one (2019), Private felling licences (5) (2017 – 2019), Coillte felling licences (3) (2018- 2021).

There is one appeal against the decision to grant the licence, the grounds of appeal contend:

- An appropriate assessment should have been undertaken because of its close proximity to Lough Gill SAC.
- These lands already have a significant amount of broadleaf trees, so why are these trees to be removed ?.
- Access to site has not been shown on Bio Map and from OSI map there is clearly no access. How was licence granted ?

The DAFM in providing a statement has stated, (summary) they are satisfied that all criteria referred to has been fully adhered to and approval is in order.

The FAC held an oral hearing on May 6th 2021 and all parties were invited to attend and participate. The FAC sat remotely and the DAFM participated remotely. Neither the applicant nor the appellant participated.

At the hearing the DAFM set out processing procedures undergone in issuing the licence, that the application was desk and field assessed, that there were no referrals, that an in-combination report was carried out and that the application was approved with standard and the following additional conditions, Additional Environmental & Silvicultural Conditions, adhere to dwelling setbacks as appropriate, Adhere to Forestry & Water Quality Guidelines, all guidelines to apply.

As part of FAC questioning, the DAFM were asked to clarify the location of the entrance to the site. The DAFM stated that initial access to the site is through the roadside gate entrance where the site notice is displayed as outlined on the Bio map. Access to the site is at the southern end and the field between the site entrance and the roadside entrance must be crossed to access the site. When asked by the FAC, will the establishment of a track or roadway through the field require consent, the DAFM stated there was no established track or roadway at present but permission may be required at a later stage to establish a roadway for harvesting purposes. The FAC asked the DAFM if the existing broadleaf trees on the site would be retained. The DAFM stated that the existing trees would be retained, that there was no illegal felling on the site and in instances where trees are to be felled, a felling licence is required. The DAFM also stated, that if the licence is granted, there would be no difficulty planting around the existing trees. The DAFM were also asked by FAC, if the applicant had access from the road entrance to the site. The DAFM stated the applicant owned the access area and has a legal right to access. The FAC also sought clarity from the DAFM in relation to water courses on the site. The DAFM stated, there is no water courses on the site and the site is flat.

In addressing the grounds of appeal, the FAC considered the appellants contention that an appropriate assessment should have been undertaken because of its close proximity to Lough Gill SAC. The FAC noted that the DAFM carried out AAS on twelve Natura 2000 sites within 15km of the proposed site. All sites were considered by the DAFM in light of their qualifying

interests, conservation objectives, supporting habitats and species and that all twelve sites were screened out for stage 2 AA. Lough Gill SAC was screened out for reasons of the absence of any aquatic zone within or adjoining the project area and the absence of any significant relevant watercourse(s) within or adjoining the project area. The FAC noted that the site (CN86369) contains no water courses and is not hydrologically connected to Lough Gill SAC. While Lough Gill SAC is geographically within close proximity of the site, the SAC is separated from the site by public road and an open field with no water courses. There is no evidence before the FAC that there is any hydrological connection between the project site and any of the Natura 2000 sites within a distance of 15km and that procedures followed in the stage one screening were consistent with the provisions of Article 6(3) of the Habitats Directive and finds no convincing reason to doubt the conclusions reached. The FAC considered the appellants contention that the lands already have a significant amount of broadleaf trees and queries why these trees are to be removed. The FAC is satisfied that established trees on the site will be retained and finds no reason to conclude that illegal felling has taken place on the site. The FAC also considered the appellants contention that *access to site has not been shown on Bio Map and from OSI map there is clearly no access, how was licence granted*. The FAC notes that the licence granted by the DAFM on August 18th 2020 requires the submission of Proof of Ownership (including removal of any constraints on ownership). Based on the evidence before it, the FAC is satisfied that access to the site is from the entrance indicated on the Bio Map (highlighted as the location where the site notice is displayed) and that the applicant has a legal right of access.

Based on the information before it, the FAC concluded that the DAFM did not make a serious or significant error or series of errors in their decision to issue the licence and did so in compliance with fair procedures. In deciding to affirm the decision to grant the licence, the FAC considered that the proposed development would be consistent with Government policy and good forestry practice.

Yours Sincerely



Dan Molloy, on behalf of the FAC