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15 June 2021

Subject: Appeal FAC 326/2020, 334/2020, 344/2020, 348/2020, 349/2020, 352/2020, 354/2020, 357/2020, 366/2020, 388/2020, 435/2020, 436/2020, 438/2020, 487/2020, 489/2020, 490/2020, 491/2020, 492/2020, 493/2020, 494/2020, 495/2020, 496/2020, 497/2020, 498/2020, 499/2020, 500/2020, 501/2020, 502/2020, 503/2020, 504/2020, 505/2020, 506/2020, 507/2020, 508/2020, 510/2020, 511/2020, 512/2020, 513/2020, 514/2020, 515/2020, 516/2020 regarding licence CN83295

Dear [Redacted]

I refer to the appeals 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 14A (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.

Licence

Licence application CN83295 is for the afforestation in the townland of Falty & Knockatean, Co. Leitrim. The proposed afforestation is for 9.1 Ha. of Birch, Pedunculate Oak, Scots Pine, Rowan, Alder and other native broadleaved species. The application was submitted to the Department of Agriculture, Food and the Marine (DAFM) on 11/02/2019. Twenty-five third party submissions were received on the licence application between the 21/03/2019 and 05/04/2019. The licence was approved by the DAFM on the 30/06/2020 subject to a number of conditions including some requested by Leitrim County Council.

There were forty-one appeals against the decision to grant the licence

Hearing

An oral hearing of the above appeal of which all parties were notified, was held by the FAC on the 28th of May 2021.

In attendance

FAC Members:	Mr. Donal Maguire (Deputy Chairperson), Mr. Derek Daly, Mr. Vincent Upton, Mr. Iain Douglas
Secretary to the FAC:	Ms. Marie Dobbyn, Ms. Charon Ramsbottom (Observer)
Appellants:	[Redacted]
Applicant:	[Redacted]

DAFM Representatives: Ms Mary Coogan, Mr. Martin Regan

Decision

Having regard to the evidence before it, in particular the record of the decision by the DAFM, the notice and grounds of appeal, the Statements of Fact submitted by the DAFM, and the considerations set out hereunder, the FAC has decided to affirm the decision of the Minister to grant licence reference CN83295 at Falty & Knockateean, Co. Leitrim.

Background

The record notes that a previous application was made under CN78289 for a conifer plantation was and refused due to the impact on the landscape. Licence CN83295 is for a different proposal, designed to address the previous refusal by reducing the area to be planted and to plant native broadleaved species. Unplanted setbacks are proposed from hedgerows, watercourses, roads and dwellings and around an ESB line that crosses the site.

An Inspector's Certification Report certified by the DAFM on 23/06/2020 indicates that desk and field inspections were carried out on the proposed afforestation. The report describes the soil type underlying the project area as predominantly podzols in nature. The slope is predominantly flat to moderate (<15%). The project area does not adjoin or contain an aquatic zone. The vegetation type within the project area comprise grass/rush.

The report notes that there are 4 Natura 2000 sites within 15Km of the proposed afforestation, 3 SACs (Boleybrack Mountain SAC 002032, Cuilcaigh-Anierin Uplands SAC 00584, Lough Arrow SAC 001673) and 1 SPA (Lough Arrow SPA 004050), and records an Appropriate Assessment (AA) Screening decision to screen out the application for these sites. The reason in all cases was the location of the project area within a separate water body catchment to that containing the Natura site, with no upstream connection, and the subsequent lack of any hydrological connection.

The report also contains an in-combination assessment carried out for the project by the DAFM dated 18/06/20 which concludes that the project, when considered in-combination with other plans and projects, would not give rise to the possibility of a direct or indirect effect on the integrity of any Natura 2000 site in view of those sites' conservation objectives.

The Inspector's Certification Report also contains an assessment of the environmental factors relating to the proposed afforestation in order to determine whether an Environmental Impact Assessment Report (EIAR) is required and concludes that it is not necessary to subject the proposed afforestation to the EIA process.

The licence application was referred to the National Parks & Wildlife Service (NPWS), Leitrim County Council and An Taisce. The NPWS report dated 08/05/2019 had no comment to make, Leitrim County Council indicated in its response of dated 29/05/2020 that it had no objection to the afforestation subject to three conditions and no reply was received from An Taisce.

Appeal

There are forty-one third party appeals against the decision to grant the licence and the full grounds of appeal were provided to all parties. The grounds of appeal are summarised as follows:

- That the proposed development would cause runoff and water pollution, impact on Lough Allen and other waterbodies.
- That the proposed development would cause an increased danger of landslides occurring in the area.

- That the proposed development would have potentially negative impacts on local recreational fisheries.
- That the proposed development would damage the scenic value of the local landscape.
- That the proposed development would cause socio-economic damage (mental wellbeing, loss of local amenities, reduction in tourism).
- That the local road network would be damaged by the proposal.
- That the proposal would have a negative impact on biodiversity.
- That the proposed development was too close to a protected site.
- That the proposed development was being funded by 'external funds' and would not bring local benefit.
- That there was already too much afforestation in Co Leitrim and also in this locale.
- That the proposed development was in contravention to the EIA Directive.
- That the proposed development was in contravention to the Birds and Habitats Directives.
- That the proposed development was in contravention to the Water Framework Directive.
- That the area proposed suffered from excessive 'windthrow'.

Evidence before the FAC

At the hearing the FAC had before it, addition to the record of the decision, a Statement of Facts (SoF) dated 14/09/2020 provided by the DAFM confirming the administrative details of licence CN83295 as outlined above and states that the DAFM is satisfied that all criteria in its standards and procedures had been adhered to in the making of the decision on this licence application.

The FAC had before it a SoF provided by the DAFM Inspectorate dated 29/10/2020 stating that the relevant Appropriate Assessment (AA) procedure of the time was applied and that the project was screened out after Standard Operating Procedures were followed. The SoF also stated that the site had been subject of a desk and field inspection, the inspector had reviewed the submissions and was satisfied that all criteria in its standards and procedures had been adhered to in the making of the decision.

One of the appellants indicated that he is residing adjacent to the development. He was concerned with the high level of woodland in the area, an absence of consultation with local residents, that the local road network was unsuited to the traffic generated by forestry operations. He referred to the impact that the proposed forestry would have on the amenities of the area in particular walking routes and that views of the lake would be blocked, and he questioned the environmental gain of the development.

The applicant's representative submitted that the appellants may not be fully aware of the nature of the current proposal and what was proposed was a mixed deciduous species, native woodland with limited establishment operations that would not cause environmental impacts.

Consideration by the FAC

The FAC consulted with publicly available mapping provided by the Environmental Protection Agency, the OSI, the DAFM, and other on-line services.

The application information and aerial photography indicates that the area to be planted is currently agricultural in character.

Soil type for the general area are identified as Peaty Gleys, Blanket Peats, Surface water gleys and Groundwater Gleys on the EPA mapping and the application identifies them as mineral and peat in nature.

A stream on the northern boundary of the site appears to join WFD River Waterbody Tarmo_010 to the north-east of the site which feed into Lough Allen. The water quality status of the Tarmo_010 is classified as unassigned in the WFD River Waterbody Status report 2013-2018 and the risk is to be reviewed under the WFD 3rd Cycle.

The Tarmo_010 River Waterbody is part of the WFD 26A Upper Shannon Catchment and the Arigna [Roscommon]_SC_010 Sub Catchment.

The underlying groundwater body is the Lough Allen Uplands Ground Waterbody EGBNI_SH_G_002 that is not at risk in the WFD 3rd Cycle programme.

The proposed afforestation is not within a Natura 2000 site nor is it required for the management of a Natura 2000 site. The FAC has confirmed that there are 4 Natura 2000 sites identified as being within 15km of the site and those are the 4 sites examined in the AA Screening.

The FAC noted that the site is located within a High Visual Amenity identified in the Leitrim County Development Plan 2015-2021 that has high sensitivity/low capacity to accommodate forestry. The FAC further notes that the local authority had no objection to the planting of native broadleaves.

In addressing the grounds of appeal, the FAC considered the following matters,

Compliance with the Habitats Directive, the Birds Directive and the Environmental Impact Assessment Directive.

With regard to Habitats and Birds Directives, the FAC noted that the DAFM had carried out a Stage 1 screening for Appropriate Assessment, including an in-combination assessment, in advance of making the decision to grant the licence. This identified 3 SACs and 1 SPAs within a 15km radius of the development. Having regard to the nature and scale of the proposed development and the characteristics of the surrounding environment, the FAC concluded that this approach was correct and that there was no possibility of the proposed development giving rise to the likelihood of significant effects on any Natura 2000 site outside this distance. The FAC noted the procedures adopted by the DAFM in its screening, listing the qualifying interests and conservation interests for each site within the 15km radius of the development and assessment of the project design, location of the project and possible pathways to the listed designated sites. The FAC notes that the nearest protected sites (SAC or SPA) are Cuilcagh-Anierin Uplands SAC 6km distant and Boleybrack Mountain SAC 9km distant neither of which is hydrologically connected the site of the proposed planting. The FAC further noted that, in the case of all of the Natura 2000 sites listed the DAFM discounted the possibility of significant effects arising for the reasons stated above. The FAC concluded that the procedures adopted by the DAFM in carrying out screening for appropriate assessment and the conclusion based on those procedures that the proposed development alone, or in-combination with other plans or projects, would not be likely to have significant effects on any Natura 2000 site were appropriate.

In considering the appeal the FAC noted that the EIA Directive sets out in Annex I, a list of projects for which EIA is mandatory and that 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 Forestry Regulations 2017, in relation to forestry licence applications, require the compliance with the EIA process 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 FAC notes that mixed, native broadleaved woodlands offer a greater biodiversity than conifer plantations.

The FAC noted that the DAFM 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. The proposal for planting 9.1 Ha. of native woodland is considerably sub-threshold for the mandatory submission of an EIAR. As noted in the record, the proposal is for the planting of land currently in agricultural use and outside of any area designated for conservation. The area is designated for high landscape amenity and was considered by the County Council who did not object noting the nature of the proposal. The proposal is for mixed species native woodland that can have biodiversity and scenic benefits and as noted, the proposal would adhere with water protection measures. The proposal would represent a less intensive use of the land than its current usage. Having regard to the record of the decision and the submitted grounds and the nature, scale and location of the proposal the FAC is satisfied that the DAFM did not err in its decision concerning the EIA process.

Impact on water quality and fisheries.

The FAC notes that there is no marked watercourse crossing or adjoining the area to be planted but that the stream on the periphery of the forest on the northern boundary appears to link to the river waterbody Tarmo_010 and onwards to Lough Allen. Lough Allen is identified as having a Moderate water quality status and is At Risk in relation to the objectives of the Water Framework Directive. The pressures on the lake have been identified by the EPA as agriculture, pasture and invasive species. The FAC notes that the slope of the site is not steep, that planting would be by invert mounding in line with the requirements of the Native Woodland Scheme, that there would be no new drainage of the site. Slow-release fertiliser will be applied manually, and the use of herbicide is not proposed. Unplanted setbacks from watercourses are proposed and required. The FAC is satisfied that adherence to the guidelines and standards specifically conditioned in the licence are adequate to protect the water quality and that the proposal would not have a detrimental impact on any waterbody.

Scenic Amenity

The FAC notes that the area within which the site is located is designated as having a High Visual Amenity identified in the Leitrim County Development Plan 2015-2021 and that the local authority have no objection to the planting of native broadleaves on this site. The application and record shows that consideration was given to an amenity area in the vicinity and that a previous application had been amended to account for this. The afforestation is mixed, native broadleaves with some Scots pine and is not being planted as a commercial woodland and that it would not be clear-felled in the future for commercial purposes. No planting would occur within 60 metres of a dwelling or 10 metres of the public road. The species are primarily deciduous in nature and the mixed nature will provide visual diversity. The FAC does not consider that the proposal would have a serious negative impact on local amenities.

Public Roads

The FAC notes that the licence contains a condition to consult the local authority on the usage of public roads and that there are statutory provisions under the Roads Act to ensure public roads are maintained in a proper condition. As noted, the proposal is for the planting of mixed species native

woodland and after establishment use of any access or public roads for the purposes of managing the forest would be minimal.

Landslides & Wind-throw

The GSI Landslide mapping shows the area to have a low susceptibility to landslides and the FAC notes that broadleaved woodland managed in the proposed manner may be less susceptible to wind-throw than monoculture conifer plantations.

Other Matters

With regard to the other grounds of appeal, socio-economic impacts, funding and the relative amount of forestry in the locality. The FAC regards these as primarily relating to national forest policy that, under law, is the responsibility of the Minister for Agriculture, Food and the Marine. The FAC can address only the grounds of appeal that relate directly to the licence for afforestation under Article 7 of the Forestry Act 2014 and the Forestry Regulations 2017.

Conclusion

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal and submissions received following notification of the appeal. The FAC is satisfied that no serious or significant error or series of errors was made in making the decision or that the decision was made without complying with fair procedure. The FAC is thus affirming the decision of the Minister regarding licence CN83295 in accordance with Section 14B of the Agricultural Appeals Act 2001 (as amended). In deciding to affirm the decision, the FAC considered that the proposed development would be consistent with Government policy and good forestry practice.

Yours sincerely,

A large black rectangular redaction box covering the signature area.

Iain Douglas, On Behalf of the Forestry Appeals Committee