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17 June 2021

Subject: Appeal FAC 246/2020 in relation to licence CN84592

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Minister for Agriculture, Food and Marine in respect of Afforestation approval CN84592.

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 the parties to the appeal.

Background

Afforestation licence CN84592 was granted by the Department of Agriculture, Food and the Marine (DAFM) on 1st May 2020.

Hearing

An oral hearing of appeal FAC 246/2020 in relation to licence CN84592, of which all parties were notified, was held by the FAC on 12th April 2021.

In attendance:

FAC Members:

Mr. Myles Mac Donncadha (Chairperson), Mr. James Conway & Mr. Derek Daly

Appellant:

Applicant / Representative(s):

Department Representative(s):

Secretary to the FAC:

[REDACTED]
[REDACTED]
Mr. Martin Regan, Mr. Barry Fitzgibbon & Ms. Mary Coogan
Ms. Heather Goodwin

Decision

The Forestry Appeals Committee considered all of the documentation on the file, including application details, processing of the application by DAFM, the grounds of appeal and submissions received including at oral hearing, before deciding to affirm the decision of the Minister to grant this Afforestation (Reference CN84592).

The proposal is for afforestation of 2.31 hectares of enclosed land in Dergvone, Co. Leitrim. It consists of a mixture of Pedunculate Oak (35%), Scots Pine (30%), Birch (20%) & Rowan (15%). Ground preparation would include mounding and pit plant, the planting method is to be angle notch and slit planting. Herbicide control is proposed in years 1, 2 and 3.

The biomap supplied by the applicant identifies a watercourse adjoining the eastern boundary of the site. This watercourse is part of the Owennayle_010 River waterbody, which has a moderate WFD status (2013 – 2018) and the site is located within the Upper Shannon WFD catchment and Shannon Upper_SC_020.

The application was desk assessed by DAFM and referred to Leitrim County Council and An Taisce. No response is recorded from An Taisce on file. Leitrim County Council responded stating the lands have high capacity/low sensitivity in terms of landscape capacity to accommodate forestry and provided two conditions in relation to the forestry contractor with a view to consultation. The proposal was also referred internally within DAFM for review by an archaeologist; who identified one Recorded Monument (a sweathouse) some 30m south of the proposal area, and a historic farmyard within the proposal area and proposed conditions.

The DAFM undertook a screening for Appropriate Assessment that identified four European sites within 15km. The screening determined that an Appropriate Assessment was not required, with reasons given for screening out each of the four sites identified. The proposal's potential to contribute to in-combination effects on European sites was also considered with other plans and projects in the vicinity of the site listed. The DAFM also considered the environmental effects of the proposal across a range of criteria and determined that the project was not required to undergo the EIA process. The DAFM issued a licence on 1st May 2020 with standard conditions and specific environmental, silvicultural and archaeological conditions.

There is one appeal against the decision to grant the licence. The grounds of the appeal are broadly that;

- an Appropriate Assessment should have been undertaken, as Dergvone townland is part of the Boleybrack (SAC) which has Annex I habitats and Annex II species which are protected under EU Council Directive 92/43/EEC,
- Leitrim County Council Development plan designates (the area) as having a low capacity for further afforestation,
- the site has a hydrological connection to the Boleybrack Mountain SAC through the Owennayle river and its tributaries,
- the cumulative effect of afforestation warrants an EIA,
- the Archaeologist failed to see historical (townland) boundary which will be destroyed between Dergvone (Leitrim) and Teebane (Cavan) and Connacht and Ulster
- queries whether prescribed bodies were contacted for comment.

The DAFM responded to the grounds of appeal stating that the licence application had been processed according to their procedures; SI 191 of 2017 and the Forestry Act 2014, that all criteria were adhered to and that approval was in order. A DAFM Archaeologist's also responded to the grounds which raised archaeological concerns and submitted as regards protection of the archaeological resource there is nothing therein that would have changed the substance of the decision made to approve the afforestation licence nor should any additional, specific, archaeological conditions have been recommended. It was submitted that the historical boundary between Dergvone (Leitrim) and Teebane (Cavan) and Connacht and Ulster is an administrative boundary that does run along the eastern boundary of the approved development area, it is defined by a tributary stream of the Graft river, that there does not appear to be any historic manmade structures demarcating said boundary, and as the boundary is defined by natural topographic feature and not man made one, nor was there any evidence that this particular spot represented a historically significant crossing point between Dergvone and Teebane, Leitrim and Cavan or Connacht and Ulster, it was not considered archaeologically or historically significant, and as such was not deemed to require any specific archaeological exclusion zones, setbacks or other archaeological mitigation measures. It was also submitted that the archaeological recommendations were sent to the National Monuments Service for an opinion and a reply was received agreeing with the conditions and offering no further recommendations or additions.

At the oral hearing the DAFM provided an overview of the processing of the application. The applicant's representative provided further details on the site; that it is set in a predominantly Sitka Spruce planted area with a steep slope, so submitted that he advised the applicant to submit a Native Woodland proposal under GPC 9. He also submitted that pit planting will be carried out on a lot of the site because of the gradient, that some invert mounding would be done in other parts of the site but no conventional mounding or no drainage is to be carried out. The appellant in attendance advanced the written grounds of appeal, expressing his displeasure that what he considered a crop of no commercial value with an area of 2ha is being planted with broadleaves and that he felt very bad for the people who have to live in

vicinity of it and raised concerns regarding fire risk. He submitted that an Appropriate Assessment should have been undertaken because of the hydrological connection to the Boleybrack Mountain SAC, that there were inaccuracies in the forest cover percentages in the assessment to determine EIA requirement, that the biomap submitted is flawed due to a number of hedgerows not being mapped, that there is an absence of consideration of a historical boundary, between two counties and two provinces, in the DAFM's assessment, no consideration of the cumulative effects on these townlands both sides of the county border, that the land is likely to be of High Nature Value (HNV) so it should have been inspected and questioned access to the proposal area. The applicant's representative submitted that there is gate access to/from the site to the road and that there is a watercourse that flows along the county boundary pertaining to the site, so a 10m setback will be adhered to. The DAFM's archaeologist submitted that the relevant county boundary was assessed, that it was included on a historic map with his report originally but that it was not highlighted in the report because of the presence of the watercourse and that there was no man made feature pertaining to it. The DAFM's forestry inspector submitted that the biomap was sufficient as could view other hedgerows on ortho maps and in any event was considering approving tree species that are present in hedgerows. He submitted the setback requirement from dwelling houses, that the proposal had environmental and social benefits and if there was an issue with the forest cover percentage presented it would not change his opinion as this a GPC 9 proposal and only c. 2ha involved. He submitted that he was aware that the area is categorised by Leitrim County Council as having a low capacity for afforestation, but that an individual proposal can still be suitable, which he found in this case. The appellant submitted that the proposal has to be commercially viable according to the DAFM guidelines, while the DAFM Inspector in response submitted that under the DAFM guidelines the land must be capable of producing a commercial crop but that the particular crop selected for planting doesn't have to be commercial and that in this case a strong environmental proposal was determined and that it is suitable to grant aid.

In addressing the grounds of appeal, the FAC considered, in the first instance, the contention that the proposed development should have undergone an Appropriate Assessment. Under Article 6(3) of the Habitats Directive, any plan or project not directly connected with or necessary to the management of a European site, must be subject to an assessment of the likely significant effects the project may have on such a designated site, either individually or in combination with other plans projects, having regard to the conservation objectives of that designated site. In this case, the DAFM undertook a Stage 1 Appropriate Assessment screening, and found four European sites within 15 km of the proposal area, and that there was no reason to extend the zone of influence in this case. The sites identified were Boleybrack Mountain SAC, Corratirrim SAC, Cuilcagh Anierin Uplands SAC and Lough Gill SAC. The DAFM considered each site in turn and listed the associated qualifying interests and the reasons for their screening conclusions. The DAFM also undertook and recorded a consideration of other plans and projects, including forestry and non-forestry projects, and they concluded that the project, when considered in combination with other plans and projects, will not give rise to the possibility of a significant effect on any Natura site. The FAC consulted publicly available information from the NPWS and EPA and identified the same four sites within a 15km radius. The grounds of appeal submitted that Dergvone is in Boleybrack Mountain SAC. The FAC find however that the proposal area is c. 1.3km from this Natura 2000 site and the other sites are at a distance of Cuilcagh Anierin Uplands SAC c. 6.5km, Lough Gill SAC c. 9km and Corratirrim SAC c. 11.4km. The grounds of appeal submitted that the site is hydrologically connected to the Boleybrack Mountain SAC also. The FAC find the Owennayle river adjoins the site on the eastern boundary and that it is hydrologically connected to the Boleybrack Mountain SAC, however the river flows south along the eastern boundary of the site away from this Natura 2000 SAC to the North and therefore the site is downstream of it. The DAFM in their reason for screening out this Natura 2000 site stated that the position of the project area was downstream of this Natura 2000 site. The FAC concur with the DAFM decision to screen out the Boleybrack Mountain SAC for Appropriate Assessment. In addition, the FAC having considered all of this, is satisfied that no likelihood of significant effects arise from the proposal itself or in combination with other plans and projects, due to the size, nature and location of the proposal and having regard to other plans and projects. The procedures adopted by the DAFM in their assessment are considered to be acceptable. In considering all the evidence before it the FAC is not satisfied that a serious or significant error or series of errors was made in the making of the decision regarding Appropriate Assessment and concurs with the conclusions provided.

In the appeal, the grounds query whether prescribed bodies were contacted for comment. The file shows that the application was referred to Leitrim County Council and An Taisce, however An Taisce did not respond and Leitrim County Council in their response stated the lands have high capacity/low sensitivity in terms of landscape capacity to accommodate forestry. The appellant submitted that the Leitrim County Council Development plan designates the area as having a low capacity for further afforestation. The FAC reviewed the Leitrim County Development Plan and find it is in an area categorised as low capacity in terms of landscape capacity to accommodate forestry. The DAFM submitted at the oral hearing that an individual proposal for afforestation can still be suitable even when consider this general categorisation of the area and that this proposal was so.

In addressing the grounds of appeal that the cumulative effect of afforestation warranted an EIA in this case, the FAC considered, in the first instance, the EU Directive. Annex I sets out 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. Neither afforestation nor deforestation (nor clear-felling) are referred to in Annex I. Annex II contains a class of project specified as "initial afforestation and deforestation for the purpose of conversion to another type of land use" (Class 1 (d) of Annex II). The Irish Regulations, 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 decision under appeal relates to a licence for the afforestation of an area of 2.31 hectares, so is significantly sub-threshold for mandatory environmental impact assessment (EIA), as set in Irish Regulations. The DAFM considered the application across a range of criteria, including water, designated areas, landscape and cumulative effects, and determined that the proposal was not required to undergo the EIA process. In the section on cumulative effects in the Inspector's Certification document a number of questions are posed and answered, including the forest cover percentage in the townland and within 5km, both at present and five years ago. At the oral hearing the appellant submitted that the percentage figures for the townland (0.34% at present and five years ago) were not correct, that there was a substantial amount of forestry in the area. The FAC find the Dergvone townland is the tenth largest townland in Co. Leitrim at c. 614 hectares. The FAC find there is a significant amount of forestry in the area and that the forest cover percentage within 5km is recorded at 21.85% at present (last spatial run 28th April 2020). The FAC find that the proposal is modest in scale at 2.31 hectares and that this would represent less than 0.5% of the townland area. The proposal area is partially bounded by forest. The in-combination assessment recorded a number of forestry projects, two of which were afforestation projects totalling an area of 19.3 hectares, said to be in the general vicinity of the project area in the Owennayle_010 River Sub Basin. Therefore, 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 the decision regarding EIA, that the proposal was not required to undergo the EIA process.

In relation to the grounds of appeal, that the Archaeologist failed to see the historical (townland) boundary which will be destroyed between Dergvone (Leitrim) and Teebane (Cavan) and Connacht and Ulster, the DAFM Archaeologist who reviewed the proposal for archaeological factors submitted a statement and set out that no change to the substance of the decision made to approve the afforestation licence was required nor should any additional, specific, archaeological conditions have been recommended. It was also submitted that the archaeological recommendations were sent to the National Monuments Service for an opinion and a reply was received agreeing with the conditions and offering no further recommendations or additions. The boundary was described in the statement in the context of the archaeological concerns raised and at the oral hearing the DAFM's Archaeologist further submitted that the relevant county boundary was assessed, that it was included on a historic map with his report originally but that it was not highlighted in the report because of the presence of the watercourse and that there was no man made feature pertaining to it. Based on the information available to it the FAC is not satisfied that the DAFM erred in its processing of the licence as it relates to this ground of appeal.

In considering the appeal the FAC had regard to the record of the decision, the submitted grounds of appeal and submissions received including at the oral hearing. The FAC is not satisfied that a serious or

significant error or a series of errors was made in making the decision or that the decision was made without complying with fair procedure. The FAC in deciding to affirm the decision, considered that the proposed development would be consistent with Government policy and Good Forestry Practice.

Yours sincerely,

A black rectangular redaction box covering the signature of James Conway.

James Conway (on behalf of the Forestry Appeals Committee)

