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14 May 2021

Subject: Appeal FAC 694/2020 regarding licence CN84584

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 14A (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

Licence CN84584 for afforestation of 7.51ha, in Cloonmore, Co Galway was approved by the Department of Agriculture, Food and the Marine (DAFM) on 24 August 2020.

Hearing

An oral hearing of appeal FAC 694/2020 of which all parties were notified, was held by a division of the FAC on 4 May 2021.

In attendance

FAC Members:	Mr Des Johnson (Chairperson), Mr Donal Maguire and Mr Dan Molloy
Secretary to the FAC:	Michael Ryan
Appellants:	[REDACTED]
Applicant:	[REDACTED]
DAFM Representatives:	Ms Mary Coogan and Mr Donal Keegan

Decision

The Forestry Appeals Committee (FAC) considered all of the documentation on the file, including application details, processing of the application by DAFM and the grounds of appeal, submissions made at the Oral Hearing and all other submissions, before deciding to affirm the decision to approve the licence (Reference CN 84584).

The proposal is for afforestation on a stated site area of 7.51h (2 plots) and 400m fencing at Cloonmore, Co. Galway. The species proposed is 85% Sitka spruce (5.92ha) and 15% Broadleaves (1.04ha). Ground preparation includes woody weed removal and mounding with slit planting. Drainage is required and there would be herbicide control in years 0-3. Soils are stated to be predominantly highly modified peat and peaty podzols, and the slope is stated to be flat to moderate. It is stated that the site is crossed by/adjoins an aquatic zone.

The DAFM referred the application to Galway County Council and An Taisce. There is no response from the County Council recorded. In summary, An Taisce responded as follows

- There must be a screening for Appropriate Assessment given the proximity of the Lough Corrib SAC. This SAC has 6 priority habitats and 9 species listed in Annex II and Annex IV of the Habitats Directive. Otters are strictly protected, and it is an offence to deliberately damage or destroy its breeding or resting places
- Nutrient release is a problem following afforestation operations. This is a particular problem as peaty soils are present. The necessity for fertiliser use should be reconsidered in light of the soil type.

The DAFM Inspector's certification states that the site is not acid sensitive or sensitive to fisheries. It is not in an area with High Nutrient sensitivity. No Freshwater Pearl Mussel populations are likely to be affected. There are no archaeological sites and the project lands are not in a prime scenic area as per the County Development Plan, not in an area commonly used by the public for recreation, and there would be no impact on a densely populated area. There is 10.08% forest cover in the townland, 6.18% within 5kms and 5.58% cover in the underlying waterbody. The Inspector carried out a screening for Appropriate Assessment for 13 Natura 2000 sites within a 15km radius, but this is incomplete and was superseded by an Appropriate Assessment Report (AAR).

An AAR was prepared by MKO Consultants and is dated 08.06.2020. This assessed all of the same sites as identified in the Inspector's screening and added one additional site (Lough Corrib SPA). The sites assessed are Camderry Bog SAC, Carrownagappul Bog SAC. Coolcam Turlough SAC. Croaghill Turlough SAC, Curraghlahanagh Bog SAC, Derrinlough (Cloonkeenleananode) Bog SAC, Kilsallgh Bog SAC, Levally Lough SAC, Lisnageeragh Bog and Ballinastack Turlough SAC, Lough Corrib SAC, Lough Lurleen Bog/Glenamaddy Turlough SAC, Shankill West Bog SAC, Williamstown Turlough SAC and Lough Corrib SPA. Lough Corrib SAC and Lough Corrib SPA were screened in for Stage 2 Appropriate Assessment. The remaining sites were screened out for reasons of the terrestrial nature of the habitats/species, no pathway, separation distance and the Natura 2000 site being in a separate hydrological sub-catchment. Lough Corrib SAC and Lough Corrib SPA were screened in for reasons of potential hydrological connectivity via drainage ditches and the Sinking River, and potential for deterioration in water quality as a result of sedimentation and hydrocarbon pollution. The AAR undertakes a Stage 2 Appropriate Assessment of these sites listing their qualifying interests and conservation objectives and examining the potential for effects on each of the qualifying interests. Specific mitigation measures are proposed in relation to water quality and Otter disturbance. In-combination projects are considered including a slatted house, dwellings and tourist accommodation (non-forestry) and forestry related - afforestation (8) (all completed), forest roads (2), felling (1), Coillte felling (2).

The DAFM produced an *Appropriate Assessment Determination (AAD)* dated 20.08.2020. The AAD accepts the screening conclusion of the AAR except that it screens out Lough Corrib SPA on the basis of hydrological separation (75km) downstream via drainage ditches and watercourses, and the direct intervening distance of 30km which is outside the foraging range of the qualifying interests of the Natura 2000 site. All sites screened out for Stage 2 Appropriate Assessment are listed and expanded reasons for the screening out conclusions are given. The overall conclusions of the AAR are accepted with following exceptions:

- The AAR contains generic mitigations and the AAD includes site specific mitigations
- The screening of the Turloughs SACs did not take account of groundwater connectivity/influence. The site is in an area of Low Groundwater Vulnerability and Low Subsoil Permeability. There are no karst features on the site
- Lough Corrib SPA is screened out and reasons given
- The project lands are located 1.6km from Slieve Bog NHA which is designated for peatlands. This habitat does not occur on the application site and there would be no adverse impacts on the NHA
- There are no aquatic zones within the application site but there are some relevant watercourses. A 5m setback is to be implemented.
- The existing hedgerow on Plot 1 will be retained with a 5m setback
- Relevant watercourses in the area have been deepened for agriculture and are not preferable habitats for the Otter.

The AAD concludes that the proposed development, individually or in combination with other plans or projects, will not adversely affect the integrity of any European site, in particular Lough Corrib SAC, having regard to their conservation objectives, and will not affect the preservation of these sites at a favourable conservation status, if carried out in accordance with site specific mitigations:

The licence issued on 24 August 2020. It is subject to standard conditions plus additional conditions requiring strict adherence to all conditions as per the Appropriate Assessment Determination, adherence to forest biodiversity guidelines, adherence to forest and water quality guidelines, and satisfactory completion of the proposed development not later than 24.08.2023. The species approved for Plot 1 are Sitka spruce (5.2ha) and Broadleaves (1.04ha). Plot 2 is for biodiversity.

There is a single appeal against the decision to grant the licence. The grounds of appeal contend that the development was screened in and Appropriate Assessment is required, and the consideration of mitigation measures is not permitted in screening for Appropriate Assessment.

In response, the DAFM details the procedures followed in the processing of the application.

The FAC convened an Oral Hearing (at the request of the appellant) on 4 May 2021. The applicant and DAFM participated remotely. The appellant did not attend. The FAC sat remotely. The DAFM briefly outlined the procedures followed in the consideration of the application and the making of the decision to grant the licence. The application was both desk and field assessed. On site drains were dry at the time of inspection (24 October 2019). A revised in-combination report was received on 20 May 2020 and was considered before the making of the decision. The Lough Corrib SAC was

screened in partly based on the proximity of the site to the Sinking River. The project lands are fully hydrologically connected to the SAC by overground flow. Slieve Bog NHA was considered but there is no encroachment on the peatlands. The applicant stated that there is no stream on the site, and that the site adjoins forestry on two sides. The NHA is separated by 1.2km and there is an intervening river. There are no notifiable activities involved in the proposed development. Fertiliser may not be necessary and there would be no problem with a condition prohibiting the use of same. There would be no need for additional drainage. In response to FAC questions, the DAFM confirmed that there are no active watercourses on the site. There are drains and these may provide hydrological connectivity to the Sinking River. The applicant stated that existing drains are deep and vegetated.

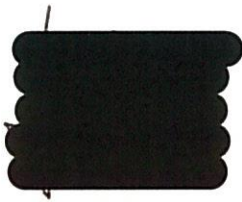
In addressing the written grounds of appeal, the FAC considered the procedures followed by the DAFM in its screening for Appropriate Assessment, the Stage 2 Appropriate Assessment and the Appropriate Assessment Determination. An AAR was prepared by consultants for the DAFM and this screened for sites within a 15km radius of the project lands and the FAC found no need to consider a wider radius in this case. Thirteen Natura 2000 sites (all SACs) were screened. All sites were screened out for Stage 2 Appropriate Assessment and reasons given for this conclusion. The FAC finds no reason to consider that the DAFM had regard to any measures designed to avoid or reduce adverse effects on any Natura 2000 site in its screening. Lough Corrib SAC was screened in and Lough Corrib SPA was also screened in for reason of a hydrological link to the project lands. A Stage 2 Appropriate Assessment for Lough Corrib SAC and Lough Corrib SPA was carried out. Qualifying interests and conservation objectives are listed, and there is an examination of the potential for adverse effects arising from the proposed development. Site-specific mitigation measures are proposed in relation to water quality and Otter disturbance. In-combination projects were considered including a slatted house, dwellings and tourist accommodation (non-forestry) and forestry related - afforestation (8) (all completed), forest roads (2), felling (1), Coillte felling (2). The DAFM made an AAD, the details of which are outlined above. The AAD generally accepted the conclusions of the AAR, with specified exceptions which included the screening out of the Lough Corrib SPA on the basis of hydrological separation distance, and concluding that the watercourses on the project lands did not provide suitable habitat for the Otter. The AAD concluded that the proposed development, individually or in combination with other plans or projects, will not adversely affect the integrity of any European site, in particular Lough Corrib SAC, having regard to their conservation objectives, and will not affect the preservation of these sites at a favourable conservation status, if carried out in accordance with site specific mitigations. Based on the information before it, the FAC concluded that the procedures followed by the DAFM were consistent with the requirements of Article 6 of the Habitats Directive and that the overall AAD conclusion was sound. The FAC noted that the site-specific mitigation measures, recommended and contained in the AAD, were carried forward into the licence by way of conditions.

The FAC also considered the procedures followed in respect of the provisions of the EIA Directive and associated Regulations. The proposed development for afforestation on a stated site area of 7.51ha is significantly sub-threshold for mandatory EIA. The FAC considered that the DAFM had adequate information before it for the purposes of EIA screening in respect of the description and characteristics of the proposed development, the location and the type and characteristics of potential impacts. The DAFM carried out a screening and concluded that EIA is not required in this

case. Based on the information before it, the FAC finds no reason to consider that the conclusion that EIA is not required in this case to be incorrect.

The FAC concluded that there was no significant or serious error in the making of the decision to grant the license and that the decision was made in accordance 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

A black rectangular redaction box covering the signature of Des Johnson.

Des Johnson

On behalf of the Forestry Appeals Committee

