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19th November 2021

Subject: Appeal 097/2021 regarding licence CN84568

Dear [REDACTED]

I refer to an appeal made 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 as amended, has now completed an examination of the facts and evidence provided by all parties to the appeal.

Background

Licence CN84568 is for afforestation of 3.41 hectares of enclosed land in Derrinvoney Upper, Co. Leitrim. The DAFM originally issued a licence on 4th October 2019 and following appeal, it was remitted by FAC to the DAFM on 18th Feb 2021 'to undertake an appropriate assessment screening of the proposal itself and in combination with other plans or projects under Article 6 of the EU Habitats Directive before a new decision is made'.

Hearing

A hearing of appeal 097/2021 was held by a division of the FAC on the 11th October 2021. The FAC members in attendance at the hearing were Mr. Myles Mac Donncadha (Chairperson), Mr. Iain Douglas and Mr. Derek Daly.

Decision

Having regard to the evidence before it, including the record of the decision by the DAFM, the notice of appeal and all submissions received, and, in particular, the following considerations, the FAC has decided to vary the decision of the Minister regarding licence CN84568 to reinstate a condition contained in the original approval.

Licence

The proposal consists of two non-adjoining plots in close proximity 1) 3.06 hectares with a mixture of Sitka spruce (85%) and additional broadleaves (15%) and 2) 0.35 hectares Common Alder. Ground preparation would include woody weed removal and mounding, the planting method is to be slit planting, with up to 250kg granulated rock phosphate per hectare to be applied. Herbicide control is proposed in years 0, 1, 2 and 3. According to the Inspectors Certification report dated (spatial run date recorded as 7th May 2021) the predominant underlying soil type is podzolic in nature. The slope is predominantly flat to moderate (<15%). The project area does not adjoin or contain an aquatic zone(s) and the vegetation type(s) within the project area comprise grass rush.

It is located in the Owengar[Leitrim]_SC_010 sub-catchment of the Upper Shannon (26A) WFD Catchment. The site is within the OWENGAR (LEITRIM)_020 sub-basin and is drained by the OWENGAR (LEITRIM)_020 waterbody which has a WFD 2013-2018 status of 'Good'.

The project area does not fall within any designated Natura 2000 site but three Natura Sites were identified within 15km of the project site: Boleybrack Mountain SAC 002032 at 2.3 kms, Cuilcagh - Anierin Uplands SAC 000584 at 6.3 kms, Lough Gill SAC 001976 within 12.4 kms.

Original Approval

The original licence application was submitted on 13th August 2019 and no referrals made. The DAFM desk assessed the proposal and undertook a screening for Appropriate Assessment that identified three European sites within 15km. The screening determined that an Appropriate Assessment was not required, with reasons given for screening out each of the three sites identified. 2 submissions were received in relation to the original application on 16/09/2019 & 09/09/2019. The DAFM issued a licence on 4th October 2019 with standard conditions and a specific silvicultural condition that plot 2 should comprise 30% Oak, evenly distributed.

Original grounds of appeal

There were three appeals against the decision. The grounds of the first appeal is in the nature of a broad statement that, based on the information available to the public, any approval would not be in compliance with the Environmental Impact Assessment and Habitats Directives, while referring to court judgements.

The grounds of the second appeal include; No registered rights of way, what is there is a very narrow foot pass through our/my lands, the foot pass has never been registered with the land registry, (that is not to say they do not have a right of way because of the long usage, it would only every been agreed by word of mouth), the road is not fit for forestry machinery, the impact it will have on such beautiful place, the people that love to walk along the old road without it being dark and gloomy, these dark woods are very frightening, it will be very intrusive on our landscape and on the farm itself and the need for sustainable farming and forestry.

The third appeal outlines grave concerns regarding the increase in forest cover generally in the area and county and it highlights a lack of referral to Leitrim County Council and the EPA for comment under the River Basin Management Plan 2018 —2021 as it is within the Lough Allen catchment area, that Lough Allen is a priority area for protection and improving water quality under the Local Authority Water Programme (LAWPRO) and that these lands drain into Lough Allen and we have grave concerns in relation to the use of herbicides for the first four years in the establishment of this monoculture crop at this location. It contends that the Forest Service has given no consideration to the cumulative impact this further plantation will have on the environment of this area or the social fabric of the community of this area and there is a lack of confidence in the application of Appropriate Assessment processes and the protection of biodiversity, also it claims it was unable to identify road access which is said to be provided but find this questionable.

Original grounds of remittal

From original FAC decision (18th February 2021):

*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 three 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, Cuilcagh Anierin Uplands SAC and Lough Gill SAC. The FAC consulted publicly available information from the NPWS and EPA and identified the same three sites. The DAFM considered each site in turn and listed the associated qualifying interests and the reasons for their screening conclusions, namely, 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. **However the FAC found there was an absence of consideration of in combination effects with other plans and projects in the vicinity.***

New approval

The licence was approved again on 18th May 2021 following upload of an in-combination statement.

New grounds of appeal received on 14th June 2021

The new grounds of the solitary appeal against the licence approved on 18th May 2021 queries if the appropriate assessment and in-combination assessment comprehends Lough Allen in its 'measurement and percentage'; submits that the issue of rights of way is not resolved; submits that Lough Allen is a priority Area for Action under the Water Framework Directive and that forestry presents a risk despite systems of protection being in place for water quality; submits that chemical weed control and fertiliser is required and that this represents a further risk to water quality; submits that question 11 of the EIA

screening has been incorrectly answered, given the weight of concern of regarding afforestation in Leitrim and that the screening for EIA should be revisited and conclude that an EIA is required.

DAFM Statement to the FAC

DAFM statement to the FAC submits that an Appropriate Assessment (AA) screening was carried out using the required SOP and that Habitat tables prescribed as part of the SOP were used to screen out the relevant Natura 2000 sites, screening rationale is provided on file. With regard to Rights of Way, the DAFM submits that the appellants have not provided any detail to suggest that legal access does not exist and that that based on the documents submitted by the applicant/consultant forester that access to the proposal is acceptable. Regarding impacts on water quality DAFM assert that by following the Environmental Requirements for Afforestation there will be no negative impact on water quality from this proposal. Regarding chemical weed control and fertilizer application the DAFM submits that this will be applied only if required and at the base of each tree and that following best practice guidance will ensure that no negative impacts will occur if these are required to get the site established. The DAFM submits that Q11 should not have been marked as 'S/A' and an answer of '@no' should have been entered. Submits that this is a small proposal (3.41 ha) which falls well below the threshold for an EIA; that there are no houses evident in the vicinity of the proposal and that forest cover is not an issue here. 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 considering the appeal the grounds of appeal the FAC noted that the DAFM undertook a Stage 1 Appropriate Assessment screening, and found three 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, Cuilcagh Anierin Uplands SAC and Laugh Gill SAC. The FAC consulted publicly available information from the NPWS and EPA and identified the same three sites. The DAFM considered each site in turn and listed the associated qualifying interests and the reasons for their screening conclusions, namely, 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. In addition, the DAFM undertook an in-combination assessment that excludes the likelihood of this project, either individually or in combination with other plans and projects, having a significant effect on the European Sites listed. 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 Appropriate Assessment and the in-combination analysis.

With regard to Rights of Way and access, the FAC are not in a position to adjudicate on legal entitlements in relation to rights of way. FAC understands from the previous hearing in this case that it is normal for DAFM to seek confirmation of any pertinent legal rights, such as ownership and access if required, prior to issuing any grant aid, but that this specific matter is generally considered to be between land owners. At the previous hearing they also referred to markings of an access track from the road to the main plot on 6 inch Ordnance Survey maps, but none appeared for the smaller plot, but they

had little concerns regarding this, as it is to consist of Common Alder and Oak and that the Oak will take over the plot in time and it has an exceptionally long growing pattern. The FAC having considered the appellants' concerns, noted that the applicant in his submission for approval had stated yes, they had adequate access, and considered there is a responsibility on applicants to be honest in their submission and should they later not prove to have access that they would have to bear the consequences. In addition, the FAC noted the proposal from DAFM that they seek clarification on access prior to commencement of works in this case. The FAC is satisfied that the DAFM did not err in its decision concerning access.

Regarding other contentions raised with regard to water quality and the general impact of additional afforestation, the FAC reviewed the material submitted by all parties to the appeal. The area is rural and agricultural in nature, with a dispersed settlement pattern. The proposal area is surrounded by grassland, does not join a public road and does not adjoin or contain an aquatic zone, part of the Diffagher River is to the north of the site and across the public road flowing south westerly and later southwards to flow into Lough Allen. The publicly available EPA maps and data confirm the proposal area is in the Owengar (Leitrim)_O10 sub catchment and Upper Shannon WFD catchment, and the river waterbody for the area, Diffagher_O10 has a good WFD status and Lough Allen has a moderate status (per the WFD status assessment 2013— 2018). The proposal is not in a referral zone or of a scale that triggers a DAFM referral, as per the DAFM Forestry Standards Manual, November 2015 and the Leitrim County Development Plan 2015 —2021 categorised the area as being of High Capacity to accommodate forestry. In the view of the FAC due regard has been taken of the status of Lough Allen; noting that DAFM acknowledged its importance at the previous hearing but stated that the site itself is not a Natura 2000 site and is not hydrologically connected to the proposal via any relevant watercourse. No evidence was provided of the presence of any protected habitats or species on the proposal area, and the FAC does not consider that there is any evidence before it that this proposal would result in a significant effect on species in the area. The proposal is considered modest in scale at 3.41 hectares on a flat to moderate slope, at modest elevation, with hedgerows but no relevant watercourse identified on site. The use of chemical weed control and fertilizer is limited in extent and is subject to the Environmental Requirements for Afforestation. In addressing the ground of appeal related to question 11 in the EIA screening, the DAFM admit their error in choosing the option 'S/A' rather than 'No', as it should have been entered. This typographical error is not of sufficient gravity to constitute a significant error in the view of the FAC. The FAC notes and accepts the arguments put forward by the DAFM that forest cover in the area was not sufficiently contentious, in their view, to merit an answer of 'Yes' and the FAC is also mindful of Leitrim County Council designation of this area having high capacity for forestry. 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 proposal would not result in any likelihood of significant effects on the environment and that the DAFM did not err in the decision regarding EIA. While not raised as a ground of appeal, the lack of consistency in approval conditions between the previous licence approval and the approval that is the subject of this appeal is deemed by the FAC to be a significant error and therefore the additional constraint regarding the use of oak must be reinstated. In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal and other submissions received. The FAC is satisfied that a significant error was made in making

the decision. The FAC is varying the decision of the Minister regarding licence CN84568 in line with Article 14B of the Agricultural Appeals Act 2001. Under the approval heading 'Additional Silvicultural and Environmental Conditions' this next must be added:

- Plant 30% Oak and 70% Common Alder, evenly distributed, in Plot 2.

Yours sincerely,

A large black rectangular redaction box covering the signature of Myles Mac Donncadha.

Myles Mac Donncadha On Behalf of the Forestry Appeals Committee