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30/08/2021

**Subject:** Appeal FAC 042/2021 regarding licence CN87345

Dear [REDACTED]

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

#### **Background**

Licence CN87345 for afforestation of 12.7 hectares of land in Cloonboniagh North, Gortnalamp, Co Leitrim was issued by the Department of Agriculture, Food and the Marine (DAFM) on 25/01/2021.

#### **Hearing**

A hearing of appeal FAC 042/2021 was held by the FAC on 23<sup>rd</sup> of July 2021. In attendance at hearing:

FAC Members: Mr. Donal Maguire (Deputy Chairperson), Mr. Iain Douglas, Mr. Derek Daly and Mr. Vincent Upton.

Secretary to the FAC: Ms. Marie Dobbyn.

#### **Decision**

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notice of appeal, submissions received and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister for Agriculture, Food and the Marine regarding licence CN87345.

#### **Overview**

The licence pertains to 12.7 hectares of afforestation, which lies in a rural landscape in Cloonboniagh North, Gortnalymph Co Leitrim. The project is located in the River Sub-Basin Eslin\_030. The River Sub-Basin Eslin has approximately 12% forest cover, which is higher than the national average of 11%. At 12.70 hectares, the DAFM considered the project as being of medium scale. The predominant soil type underlining the project area is reported as being predominantly podzols in nature. The slope of the site is described as being predominantly flat to moderate (<15%). The project area is crossed by an aquatic zone. The vegetation types within the project area are noted as being improved grassland, wet grassland and hedgerows.

The area proposed for afforestation does not contain, nor is it contiguous to any Recorded Monuments. The nearest such site is a ringfort (It0 035-007) located some 160m to the north. The DAFM Archaeology Section also reported that historic editions of the Ordnance Survey show historic farmyards within and adjacent to the proposed development area. Recent aerial photographs indicate that these structures may survive in whole or in part. The historic townland boundary of Cloonboniagh North, Gortnalymph, Co. Leitrim also runs through the development area.

The site was subject to a field inspection by DAFM on the 12.01.2021. The proposal does not lie within the boundaries of a European site and the DAFM recorded a screening for Appropriate Assessment and identified three European sites within 15km. Each site is considered in turn alongside its qualifying interests/special conservation interests and a screening conclusion and reasons are recorded.

The Ballykenny-Fisherstown Bog SPA (004101) was screened out because of the unsuitability of the project area for use by any species listed as a qualifying interest of the Natura site. DAFM were of the view that the project area is 10.8km from the SPA and will have no effect on any of the qualifying interests

The Clooneen Bog SAC (002348), was screened out because the project area is situated downstream of the Natura site, and there is thus no direct hydrological connection. The DAFM conclude that the project area is 8.8km from the SAC and that it will have no effect on any of the qualifying interests.

The Lough Forbes Complex SAC (001818) is also screened out. DAFM note the absence within and adjacent to the project area, of any habitat(s) listed as a qualifying interest of the Natura site. The project area is 10.8km from the SAC and numerous lakes and in excess of 15km of river separate the project from the SAC. DAFM conclude that it will have no effect on any of the qualifying interests.

The DAFM also recorded a consideration of other plans and projects in-combination with the proposed afforestation, dated the 12/01/2021. DAFM deemed that there was no potential for

the project to contribute to any effects on the European Sites, when considered in-combination with other plans and projects. Furthermore, DAFM considered that the regulatory systems in place for the approval, operations (including any permitted emissions) and monitoring of the effects of these other plans and projects are such that they will ensure they too do not cause environmental pollution or give rise to direct or indirect effects on the integrity of any European Sites in view of those sites' conservation objectives. Therefore, DAFM excluded the likelihood of the project, either individually or in combination with other plans and projects, having a significant effect on the European Sites listed above.

The DAFM further considered the proposal across a range of relevant criteria and recorded a decision that the proposal should not proceed to Environmental Impact Assessment (EIA).

There were two referrals to prescribed bodies, Leitrim Co Council and An Taisce, dated the 06/10/2020 and 06/11/2020 respectively. No response was received from An Taisce. Leitrim Co Council responded on the 13/11/2020 raising no particular objections.

One submission was received from a member of the public, the Appellant, and was recorded by the DAFM in making their decision. The Appellant submitted the submissions, which raised much the same issues and concerns that are detailed in the appeal. The licence was issued with conditions on 25.01.2021.

## **Appeal**

There is one appeal against the decision. The grounds contend that:

1. No reference to protection of townland boundaries in situ
2. No reference to the EPA re favorable water framework directive and water quality in lough Forbes, regarding issues with pesticides and herbicides and other pollutants
3. Many licenses have been granted along the Eslin River flood plain.
4. An appropriate assessment should have been carried out because of the hydrological connectivity from this site to the lough Forbes Complex SAC
5. The application should have been referred to an ecologist because of high nature value lands and the flood plain in this application



6. Cloonboniagh lough is known locally for its diverse variety of BirdLife including the EU protected Whooper Swan and curlew.

In a response to the appeal, the DAFM submitted the dates and steps in processing the application. They submit that the decision was issued in accordance with their procedures, S.I. 191/2017 and the 2014 Forestry Act and that they were satisfied that all criteria outlined in its standards and procedures policy had been adhered to in making a decision on the application. The statement goes on to submit that there is no hydrological connection or obvious threat to any Natura 2000 site. The DAFM issued the following response dealing with each specific ground in turn.

- 1: No hedges or Townland boundaries are proposed to be removed. The Afforestation Bio-diversity map has proposed to retain a 5m unplanted area from all hedgerows.
- 2: Adherence to Forest Service Water Quality Guidelines (a condition attached to Afforestation Licence) will protect water quality. No fertiliser or pesticides are proposed to be used on this project. Herbicide will be applied manually by knapsack sprayer to a small spot around each tree.
- 3: Appropriate Assessment Screening was carried out according to current Guidelines. The application has been 'Screened Out' as the project is considered to have no negative effect on any Natura 2000 designated areas. Natura 2000 areas within 15kms of project include Clooneen Bog SAC – 8.8km (no hydrological connection), Lough Forbes SAC – 10.8kms (hydrologically connected via approximately 13km of numerous lakes and rivers, Ballykenny/Ficherstown SPA – 10.8km (beyond foraging range of any of the qualifying interests)
- 4: There is currently 3.88% forest cover in the waterbody area, 11.1% forest cover in the Townland and 10.02% forest cover within 5km radius. The amount of forest cover in the area has been considered and is not thought to be an issue.
- 5: As the project was 'Screened out' there is no requirement to refer the application to an Ecologist.
- 6: The nearest Curlew nesting site is 3.2km away and the project area is beyond the foraging range of the whooper Swan.
- 7: Each Afforestation application is assessed for its requirement for EIA.

#### **FAC considerations**

The FAC held a hearing to consider the appeal on the 23.07.2021, the FAC had regard to the record of the decision, the grounds of appeal and any submissions received. Under Article 6(3) of the Habitats Directive, any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The proposal is for the afforestation of lands. The proposal is not within a European site and is not connected with or necessary to the management of such a site. The FAC consulted publicly available information from the NPWS and EPA and identified the same European sites within 15km. The FAC considered the range and type of plans and projects considered in combination with the proposal and found them acceptable. The proposal is for the afforestation of agricultural land on a mineral soil and has undergone both desk and field assessment by the DAFM. The lands are not within any European site and lie at a considerable distance from the closest European site. There is no record of species or habitats associated with any European site being present on the lands before the FAC. The Eslin River lies to the west of the proposal and the FAC does not consider that there is any convincing evidence before it that this river would be significantly affected by the proposal. This river flows southerly to enter a small lake, Cloonboniagh Lake, and then continues through a network of rivers and lakes to meet the Shannon and enter the boundary of Lough Forbes Complex SAC and Ballykenny-Fisherstown Bog SPA after some 14km. Forestry outside of these sites has not been identified amongst the Threats, pressures and activities with impacts on the sites in the Nature 2000 data from prepared by the NPWS. The FAC considered the reasons recorded for screening the proposal and the decision not to proceed to Appropriate Assessment and did not identify any serious or significant errors.

The proposal lands lie within in the River Sub Basin of the Eslin\_030. The FAC considered that there was no evidence that the proposal would impact on this waterbody. The FAC also considered the proposed development in the context of the Environmental Impact Assessment (EIA) Directive. The EU EIA Directive sets out, in Annex I, 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 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 Forestry Regulations 2017 (S.I. 191 of 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. At 12.7 ha the proposal is



significantly below the threshold for mandatory EIA. The DAFM did undertake a sub-threshold consideration of the proposal across a range of criteria including existing land use, cumulative effect and extent of project, designated and non-designated habitats, archaeology, and landscape and concluded that it should not proceed to EIA. The proposal is for the afforestation of land currently in agricultural use. As noted by the County Council, the land does not lie within an area of special amenity and is considered not of high sensitivity regarding afforestation. Information provided by the Commissioners of Public Works/OPW ([floodinfo.ie](http://floodinfo.ie)) does not identify the area as being prone to flooding or records past flooding events. The proposal was considered by an Archaeologist who attached specific conditions regarding features on the lands including a setback from the townland boundary. No evidence of the presence of protected species or habitats was submitted with the appeal and the DAFM submitted that the closest recorded Curlew nesting site was over 3km from the proposal. Having regard to the nature, scale and location of the proposal as licenced and the record of the decision, the FAC did not consider that there was any evidence before it that a serious or significant error had been made in this regard.

The FAC considered the appellant's specific grounds of appeal and noted that they had been comprehensively addressed and listed in detail by the DAFM in their statement of fact. The DAFM contended that the terms and conditions attaching to the licence were adequate to protect water quality and noted that no fertilizer would be used during the afforestation process and that herbicide would be employed in a controlled manner. The FAC noted that these details were submitted in the application and included in the licence as issued. The proposal is bordered to the west by the Eslin 30 waterbody which has been assigned a Moderate status (2013-2018) and as At Risk in relation to the Water Framework Directive. The pressures identified by the EPA are Agriculture, Pasture. In addition to the inclusion of an unplanted setback in which no operations would be undertaken, the plot closest to the river would be planted with birch, a deciduous broadleaf. The lands lie on the Kilglass Dromod Ground Waterbody which has been assigned a Good Status and not at risk. The FAC considered that the DAFM had adequately addressed the grounds of appeal and, having regard to the nature, scale and location of the proposal and the licence conditions that there was no evidence that they had not made any serious errors in assessing the application in relation to the submitted grounds of appeal.

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 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 regard to fair procedures. The FAC is thus affirming the decision to the Minister

regarding licence CN87345 in line with Article 14B of the Agricultural Appeals Act 2001, as amended.

Yours sincerely

A black rectangular redaction box covering the signature of Donal Maguire.

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Donal Maguire on behalf of the forestry Appeals Committee

