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10/09/2021

Subject: Appeal FAC 081/2021 regarding licence CN86510

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 CN86510 for afforestation of 11.52ha in Corglancey, Sracummer, Co Leitrim was issued by the Department of Agriculture, Food and the Marine (DAFM) on 24/03/2021.

Hearing

A hearing of appeals FAC 081/2021 was held by the FAC on 26/08/2021. In attendance at hearing: FAC Members: Mr. Des Johnson (Chairperson), Mr Donal Maguire and Mr Dan Molloy. Secretary to the FAC: Mr Michael A Ryan.

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 CN86510.

Overview

This project concerns the planting of 11.52ha of mixed broadleaves over six plots. It lies in a rural landscape in Corglancey, Sracummer, Co Leitrim in the River Sub-Basin Killanummery_010. The River Sub-Basin Killanummery_010 has approximately 41% forest cover, which is higher than the national average of 11%. At 11.52 hectares the project is considered medium in scale. The afforestation project, CN86510, is not directly connected with or necessary to the management of any European site.

Plot 1: The easternmost two-thirds of the plot are underlined with blanket peat. The remainder of the plot, along the watercourse, is underlined with mineral alluvium.

Plot 2: The western half of the plot is underlined with surface water/ground water gleys, described as deep poorly drained mineral soil derived from mainly non-calcareous parent materials. The eastern half of the plot is underlined with mineral alluvium.

Plot 3: The easternmost two-thirds of the plot are underlined with surface water/ground water gleys, described as deep poorly drained mineral soil derived from mainly non-calcareous parent materials. The remainder of the plot, along the watercourse, is underlined with mineral alluvium.

Plot 4: This, the largest of the plots, is primarily underlined with surface water/ground water gleys, described as deep poorly drained mineral soil derived from mainly non-calcareous parent materials. A portion at the southwestern end of the plot is on blanket peat.

Plot 5: This plot is primarily underlined with surface water/ground water gleys, described as deep poorly drained mineral soil derived from mainly non-calcareous parent materials. A portion at the north-eastern end of the plot, near the watercourse, is underlined with mineral alluvium.

Plot 6: This plot is primarily underlined with mineral alluvium. A portion at the north-eastern end of the plot is underlined with surface water/ground water gleys, described as deep poorly drained mineral soil derived from mainly non-calcareous parent materials.

The project area is adjoined by two second order streams which discharge to the nearby Killanummery River, providing hydrological linkage with Lough Gill SAC via a surface water distance of ca. 2.4 km. The stream at the western side of the project area flows through Plot 1, along part of the eastern boundary of Plot 2, and along part of the southwestern boundary of Plot 4. The stream at the eastern side of the project area flows along the eastern boundary of Plot 3, through the eastern side of Plot 5 and through the western side of Plot 6. There are drainage ditches (remnants of a previous agricultural landscape) which flow direct to EPA watercourses and onwards to Lough Gill SAC. Drains are fast flowing and there is little vegetation other than the hedgerow and grassland vegetation along their banks. The EIAR supplied by the applicant finds that there is minimal flood risk in the project area.

A site survey was carried out on 09/02/2021 by DAFM. In it the inspector noted that 'the project comprises wet grassland (GS4). There are hedgerows (WL1), associated earth banks (BL1) and agricultural drains (FW4) along old field boundaries. There are pockets of scrub (WS1) along the riverbanks. Access to the project area requires crossing the watercourses. The surrounding landscape consists of similar agricultural grasslands (GSi4, GS4), hedgerows (WL1), conifer plantation (WD4), watercourses (FW4), roads (BL3) and dwellings (BL3)'.

There are no Annex I habitats noted in the project area. The project is outside areas classed as areas of High Visual Amenity or Areas of Outstanding Natural Beauty in Leitrim CDP 2015-2021. It was determined to have a high Landscape Capacity to accommodate Forestry as set out in Leitrim CDP 2015-2021.

The application was not referred to any referral bodies.

An NIS dated 18/01/2021 was submitted by the applicant

The DAFM commissioned an AAD, dated 03/03/2021, which set out the following assessment.

In the AAD, the DAFM recorded a screening for Appropriate Assessment and identified eight European sites within 15km. Each site is considered in turn alongside its qualifying interests/special conservation interests (QI's and CO's) and a screening conclusion and reasons are recorded.

The Unshin River SAC 00189 was screened out because the location of the project area is 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 Boleybrack Mountain SAC 002032 was screened out because an application of the current Annex I Habitats Table (18/12/2019), which indicates screen out scenarios in relation to habitats listed as QIs for this European site. Also, this site lies upstream of the project area.

The Lough Arrow SAC 001673, the Union Wood SAC 000638, the Ballysadare Bay SAC 000622, the Bricklieve Mountains and Keishcorran SAC 001656, the Lough Arrow SPA 004050 and the Ballysadare Bay SPA 004129 were all screened out because the location of the project area is within a separate water body catchment to that containing the Natura sites, with no upstream connection, and the subsequent lack of any hydrological connection.

The Lough Gill SAC 00197 was screened in as it is hydrologically connected with each of the proposed afforestation plots. Therefore, there existed the potential for adverse effects to the Qualifying Interests of this site should the watercourses adjoining the project area become exposed to excess sediment, nutrient enrichment and/or pollution. It was the subject of a stage 2 Appropriate Assessment.

Outcome of the Stage 2 AA

In relation to the Qualifying Interests, and supporting habitats and species, associated with Lough Gill SAC 001976: The DAFM imposed the following conditions; The applicant shall adhere to all water protection measures relating to water setbacks, silt and sediment control, temporary water crossings, control of operations (including timing), and onsite storage of chemicals, fuels, etc. and disposal of waste, as set out in *The Environmental Requirements for Afforestation, December 2016 (DAFM, 2016)*. A substantial list of individual detailed conditions dealing with water related and other issues was set out in the ADD.

Conclusion of the AAD

The Minister for Agriculture, Food & the Marine determined, pursuant to Regulation 42(16) of the European Communities (Birds and Natural Habitats) Regulations 2011 (as amended) and Regulation 19(5) of the Forestry Regulations 2017 (as amended), based on objective information, that no reasonable scientific doubt remained as to the absence of any adverse effect on the integrity of any European site.

The DAFM also recorded a consideration of other plans and projects in-combination with the proposed afforestation, dated the 24/02/2021. 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.

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).

The licence application was approved on 24/03/2021 with conditions, including adherence to the T&C's set out in the AAD.

A single appeal was received from the *Save Leitrim* group, a submission was received from a member of the public, but that person did not go on to lodge an appeal after the decision was made public.

Grounds of appeal

The ecologist failed in her assessment to take into account the habitats and species of birds which are found in the locality, kestrel, hen Harrier common buzzard, Meadow twit, snipe and cuckoo.

Habitat loss is the greatest threat to biodiversity.

The Hen Harrier is an EU priority protected species and this was known to occur here, and the continued plantation depletes their foraging grounds.

In the absence of a proper in-combination or cumulative effects assessment, this project could be detrimental to the social and economic sustainability of this community

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.

FAC considerations

The FAC held a hearing to consider the appeal on the 26.08.2021, 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 a protected 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 sit

There is no record of the species or habitats associated with any European site being present on the lands before the FAC, nor did the appellant submit any evidence to substantiate their assertions regarding the presence of certain named bird species being associated with the site. The FAC considered the reasons recorded for screening the proposal and the decision to proceed to Appropriate Assessment and did not identify any serious or significant errors.

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 11.52 ha the proposal is significantly below the threshold for mandatory EIA.

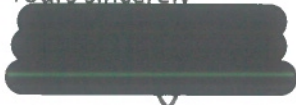
The DAFM did undertake a sub-threshold consideration of the proposal across a range of criteria including existing land use, cumulative effect and extent of project, designated and non-designated habitats, archaeology, and landscape and concluded that it should not proceed to EIA. The proposal is for the afforestation of land currently in agricultural use. 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) does not identify the area as being prone to flooding or records past flooding events. No evidence of the presence of protected species or habitats was submitted with the appeal. 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 noted that the application was for the planting of native broad leaf tree species which contribute to biodiversity and provide additional habitat for many species of interest.

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 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 CN86510 in line with Article 14B of the Agricultural Appeals Act 2001, as amended and 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 Donal Maguire.

Donal Maguire on behalf of the forestry Appeals Committee