



18th December 2020

Subject: Appeal FAC049/2020 regarding licence CN83270

Dear

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 14 A (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 CN83270 for 21.87 ha of afforestation at Rathkyle, Co. Kilkenny was approved by the Department of Agriculture, Food and the Marine (DAFM) on 15th January 2020.

Hearing

An oral hearing of appeals FAC049/2020 was held by the FAC on 16th December 2020. In attendance:

FAC Members: Mr. John Evans (Deputy Chairperson), Mr. James Conway, Mr. Seamus Neely, Mr. Vincent Upton

Secretary to the FAC: Ms. Marie Dobbyn

Appellant: Not present

Applicant's Representatives:

DAFM Representatives: Mr. Robert Windle, Ms. Mary Coogan

Decision

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notice of appeal, submissions made at the oral hearing and all other submissions received, and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister regarding licence CN83270.

The licence pertains to the afforestation of 21.87 ha at Rathkyle, Co. Kilkenny. Site preparation would be through mounding with no additional drainage and 250kg per ha of granulated rock phosphate would be applied and manual and herbicide weed control in years 0 and 1. The application includes 1,400 m of stock fencing. Planting would be of 18.89 ha of mixed Sitka spruce and broadleaves and 2.98 ha of mixed native species including pedunculate oak, alder and other broadleaves in different plots.

The application was referred to Kilkenny County Council and An Taisce and neither organisation provided a submission. The application was desk and field inspected by a DAFM District Forestry Inspector and a report and conditions were prepared by a DAFM Archaeologist. An appropriate assessment screening was undertaken focusing on European sites within 3km and a second screening was undertaken focusing on sites within 15km and the proposal was screened out. Unplanted setbacks are proposed from the public road and from hedgerows and mature trees and scrub will be retained. The application was approved on 15th January 2020.

There is one appeal against the decision. The grounds contend that the appropriate assessment screening undertaken by the Minister does not comply with the law and that a Natura Impact Statement is required. Reference is made to definition of significant effects in the decision of Finlay Geoghegan in *J. Kelly -v- An Bord Pleanala & others* 2013 802 JR 25/07/2014. The appeal submits obligations concerning record keeping and information that should be identified in relation to catchments and turloughs. Reference to CJEU judgement in *Case C-323/17* regarding the consideration of measures intended to avoid or reduce harmful effects of a plan or project on a European site was also made. A document submitted to be from the NPWS was also provided.

In a statement to the FAC, the DAFM submitted that the proposal was desk and field assessed in line with DAFM procedures and that the field inspection identified the vegetation type as grass, rush on a brown earth soil. It is submitted that all boundaries and hedgerows were inspected and no relevant watercourses are present on the site and that there is no connection to a European site, and distances to the closest sites are provided, and that the proposal was screened out for appropriate assessment.

An oral hearing was held which was attended by representatives of the DAFM and the Applicant. The DAFM outlined their processing of the licence including the appropriate assessment screening undertaken. The desk and field assessment was described and it was again submitted that the land and boundary was inspected and that there is no hydrological connectivity to any European site and that the proposal land is in agricultural use and on mineral soils. It was submitted that DAFM procedures had changed during the processing of the application and that a second appropriate assessment screening was undertaken and it was confirmed that the screening and consideration of in-combination effects were undertaken prior to the decision being made on the application. It was submitted that referral to prescribed bodies in this case was discretionary and that given the nature of the lands and proposal and the absence of any pathway and degree of separation from any European sites, no referral to the NPWS was deemed necessary in this case. The DAFM confirmed that no submissions were made by An Taisce or the County Council and that a submission from a member of the public was considered in making the decision. The DAFM submitted that there is no turloughs in the area. The Applicant's representative described the application and confirmed the description of the proposal.

The appropriate assessment screening undertaken by the DAFM identified four European sites within 15km and that there was no reason to extend the radius in this case. Each European site and its qualifying interests are considered in turn and reasons are provided for screening it out. Boundaries of

Culahill Mountain SAC (00831) and Lisabegney Bog SAC lies some 15km to the west and 8.3km to the northwest, respectively, and the associated qualifying interests are described as not being on the proposal lands which are comprised of improved agricultural land. The closest boundary of River Barrow and River Nore SAC is 2.4km to the east and it is described that there is no hydrological connection with the SAC and that the proposal would occur on improved agricultural land. The boundary of River Nore SPA lies 5.4km to the west and it is submitted that there are no aquatic zones on or adjacent to the site. The DAFM submitted that they had undertaken a site inspection and verified that there is no hydrological connection with any European site and determined the current vegetation on the site. The DAFM also documented other plans and projects, both forestry and non-forestry, considered in combination with the proposal. While existing mature forests are present to the east of the site there has been few forestry licences issued for afforestation, forest road works or felling in previous years with the most recent afforestation licence granted in 2017. The overall forest cover in the townland is 5.28% and this has not changed in the previous 5 years. The grounds of appeal do not identify any specific European site, effects or pathways of concern. There are no European sites with Turloughs as a qualifying interest in the area and based on information from the Geological Survey of Ireland the geology of the area is a mixture of sandstone and siltstone and there are no karst features or underground connections in the area. The DAFM undertook a field inspection and verified that the land is agricultural land with a grass rush vegetation type on a mineral soil. The FAC concluded that the screening did not consider measures to avoid or reduce significant effects on a European site and that none would be required to determine that there is no likelihood that the proposal itself or in combination with other plans or projects would result in a significant effect on any European site.

While the grounds of appeal do not raise specific concerns regarding environmental impact assessment, the FAC also considered the DAFM record of this consideration. The EU EIA Directive sets out in Annex II 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. 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 proposal is considerably sub-threshold for the mandatory submission of an EIA report. The DAFM considered the application across a range of criteria, including water, designated areas, landscape and cumulative effects, and determined that the project was not required to undergo the EIA process. The proposal as described is being for the afforestation of 21.87 ha of agricultural land on a mineral soil with no connection to any river or lake. The proposal was considered by an Archaeologist and conditions are attached regarding setbacks and operations related to the sites identified and the FAC considers these acceptable and suitable. 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.

In considering the appeal the FAC had regard to the record of the decision and 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 is thus affirming the decision of the Minister regarding licence CN83270 in line with Article 14B of the Agricultural Appeals Act 2001, as amended. In deciding to affirm the decision, the FAC considered that the proposed development would be consistent with Government policy and Good Forestry Practice

Yours sincerely,

Vincent Upton On Behalf of the Forestry Appeals Committee