



An Coiste um Achomhairc
Foraoiseachta

Forestry Appeals Committee

18 December 2020

[REDACTED]
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Our ref: 017/2020

Subject: Appeal in relation to afforestation licence CN84908

Dear [REDACTED]

I refer to the appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine (DAFM) in respect of licence CN84908.

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 the parties to the appeal.

Background

Afforestation licence CN84908 was granted by the Department on 10 December 2019.

Hearing

An oral hearing of appeal 017/2020 was conducted by the FAC on 10 December 2020.

Attendees:

FAC: Mr Des Johnson (Chairperson), Mr Luke Sweetman, Ms Paula Lynch & Mr Pat Coman

Secretary to the FAC: Mr Michael Ryan

Appellant: [REDACTED]

Applicant representative: [REDACTED]

DAFM: Mr Emmet Byrnes, Mr Seppi Hona and Ms Mary Coogan

Decision

The Forestry Appeals Committee (FAC) considered all of the documentation on the file, including application details, processing of the application by DAFM, the grounds of appeal, submissions made at the Oral Hearing and all other submissions, before deciding to affirm the decision to grant this licence (Reference CN 84908).

The proposal is for afforestation on a stated site area of 4.04ha and 565m fencing at Cloonee, Co. Leitrim. The project lands are in two plots divided by an ESB line. Proposed planting species include Alder, Pedunculate Oak, Downy Birch and additional Broadleaves in a Native Woodland setting. Woody weed removal, slit planting and manual weed control are proposed. The site is not prone to flooding and is not acid-sensitive to fisheries. It is not within any NHA, is not in a Prime Scenic Area as

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Kilminchy Court,
Portlaoise,
Co Laois
R32 DWTS

Eon/Telephone 076 106 4418
057 863 1900

per the County Development Plan and does not contain an archaeological site or monument. It is stated to be exposed and at 80-90m elevation. It is further stated that there is 0% forest cover in the townland, 8.25% forest cover within 5 km of the project lands and 4.23% forest cover in the underlying waterbody.

In processing the application, the DAFM carried out a screening in accordance with the provisions of Article 6(3) of the Habitats Directive. This identified the following Natura 2000 sites – Ballykenny-Fisherstown Bog SAC, Clooneen Bog SAC and Lough Forbes Complex SAC and, following examination of the qualifying interests and conservation objectives, all were screened out for Appropriate Assessment. In-combination effects considered included planning permission for a dwelling, 4 afforestation licences (since 2017), 4 felling licences (since 2017) and 2 Coillte felling licences (since 2017).

The DAFM did not refer the application to external bodies but did refer to a Departmental Archaeologist. The Archaeologist recommended adherence to normal standards of the Forestry and Archaeology Guidelines, in the event of a decision to grant the licence.

The licence issued on 10 December 2019 subject to standard conditions.

There is a single group appeal against the decision to grant the licence. The grounds contend that the Minister has not taken full consideration of all his functions under the Habitats Directive. The Bio Map is deficient in not including legally required details – setback distance for hedgerows, drainage and cultivation proposed for different plots. Areas of Biodiversity Enhancement (ABE) selected are not satisfactorily situated and not consistent with Environmental Requirements for Afforestation. The proposal does not protect and enhance retained habitats throughout the forest rotation. The decision is not consistent with State Aid Decision. The EIA assessment is invalid. The appellants contest the Inspector's assessment of in-combination effects. Farming organisations have been calling for a moratorium on afforestation in Co. Leitrim. The Minister commissioned a study on the Socio-Economic Impact of Forestry in Co. Leitrim. The EIA screening did not account of the criteria set out in Annex III of the EIA Directive and this invalidates the screening and determination. There are concerns that the Appropriate Assessment screening is flawed. There is evidence that the site is hydrologically connected to a pNHA within 3km and at a lower elevation. A number of other pNHAs are downstream. The proposal should have been referred to relevant consultation bodies.

In response, the DAFM state that the site was screened for AA. The submitted Biomap shows all of the required features and is acceptable. There is no minimum setback required for hedgerows. The site is to be invert mounded with no drainage required. The site is proposed under Native Woodland Establishment. The site is significantly sub-threshold for EIA. An in-combination assessment formed part of the Appropriate Assessment screening process, including examination of other forestry related projects in the vicinity. The forest cover in this townland is 0% and 4.23% cover in the underlying waterbody. The application was considered by the DAFM's Senior Archaeologist. The nearest Recorded Monument is a megalithic tomb, some 250m to the south. The site is not in an Area of Outstanding Beauty or an Area of High Visual Amenity as per the County Development Plan (CDP). It is not adjacent to a Scenic route and does not interfere with any protected view or prospect. The site is in an area with high capacity to accommodate forestry in the CDP. There is no justification in the statement that "a site of historical and cultural significance which forms part of this site was not taken into account" as part of the EIA screening process. The characteristics, location and type and



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characteristics of the proposed project were considered. The Appropriate Assessment screening resulted in the production of a detailed list of existing and approved projects. This list was also taken into consideration in making a determination that EIA was not required. The legal requirements of Article 4(3) of the EIA Directive have been fulfilled. There is no hydrological connection from this site.

The FAC convened an Oral hearing on 10th December 2020. The DAFM stated that the proposed application had been field and desk assessed before the decision had been made. No referral had been made to the National Parks and Wildlife Service (NPWS) as such referral would have been discretionary in this case. The Appropriate Assessment screening process adopted at the time had been applied. An EIA screening had been carried out. The appellant contended that the proposal was within the referral zone and should have been sent to the NPWS and An Taisce for observations. The site is close to a raised bog and this was not considered. There is a local Curlew project being undertaken in a nearby location and the area is very sensitive. Important biodiversity would be lost. Under questioning, the appellant accepted that new biodiversity could be created over time, but that existing biodiversity would be lost. An important concern is the proposed change of land use from agricultural use to forestry. There are important pNHAs within a couple of kms of the project lands. The applicant's forester stated that the provision of wildlife habitat and biodiversity were key drivers in this proposal. Invert mounding would be used and setbacks from existing hedgerows provided. There would be no use of fertilizer and no spraying. A field inspection had revealed heavily vegetated watercourses. The Curlew project is 500-700m to the south of the project lands and would not be affected by the proposed development. A large variety of broadleaves would be planted. The appellant contended that the proposal was for a commercial crop from which the public would not gain any benefit for many years. The DAFM stated that the existence of pNHA was a key reason for field inspection. Mitigation measures can be applied in respect of these in the event of any hydrological connection. There are drains on the site but these do not connect to a watercourse. The drains are heavily vegetated. The applicants stated that there is no proposal to cut new drains. These lands require rushes to be cut on an ongoing basis. The appellant stated that there is a hydrological connection provided by runoff in times of high rainfall. The appellant accepted that the FAC has no role in determining issues in respect of State Aid. The DAFM queried the appellants reference to "significant raised bog" and stated that the bog referred to was undesignated. The appellant reiterated that social impacts from afforestation should be given greater consideration. The DAFM stated that the matter had been referred to National Monuments as there is a monument at approximately 250m separation and that the response had agreed with the DAFM Archaeologist's recommendation.

In addressing the issues raised in the written and oral submissions by the appellant, the FAC considered that a number of these related to policy matters. The FAC may have regard to such policies matters in determining appeals coming before it, but is not a policy making body in respect of forestry or competing land uses. Furthermore, the FAC has no remit in respect of State Aid matters.

The FAC examined the procedures followed by the DAFM before concluding that EIA is not required in this case. The proposal for a broadleaf woodland on a site area of 4.04ha is significantly sub-threshold for mandatory EIA under Irish Regulations which sets a threshold for such mandatory assessment at 50ha. The FAC is satisfied that the DAFM had adequate information before it in respect

of the characteristics of the proposed development, the location and the type and characteristics of potential impact arising from the proposed development, to enable a preliminary screening for EIA. In this regard, the FAC noted the detailed information submitted describing the proposed development, including planting methods, submitted information relating to the location, forestry coverage in the townland and in the underlying waterbody and the field inspection carried out in advance of the making of the decision. The FAC noted that the DAFM had considered other projects, including forestry related projects, in an in-combination assessment. Based on the information before it, the FAC considers that there is no convincing evidence before it to indicate that procedures followed by the DAFM in the preliminary screening were flawed or that the conclusion that EIA is not required, is incorrect.

The appellants contended that referrals should have been made to the NPWS and An Taisce for observations. The DAFM contend that there is no mandatory referral requirement in this case. Having regard to the nature and scale of the proposed development and the characteristics of the receiving environment, the FAC considers that the DAFM properly exercised its discretion in respect of referrals. The appellant raises concerns that the Appropriate Assessment screening may be flawed but offered no convincing evidence to substantiate these concerns. There are pNHAs in the wider area including Lough Sallagh, Lough Errew, Lough Rinn and Clooncoe Wood and Lough, which share the same Shannon Upper sc 050 sub-catchment with the proposal but there is no evidence of direct hydrological connection from the project lands and no obvious pathway for any adverse effects on these sites arising from the proposed development. At the Oral Hearing, the appellant referred to a Curlew project being undertaken in the wider area but the applicants argued that this was 500-700m to the south and out of range for any possible effects. Based on the evidence before it, the FAC concluded that there is no convincing evidence that the proposed development would have any adverse effects on the referenced Curlew project. The issue of loss of biodiversity was contested at the Oral hearing. Having regard to the nature of the proposal, which would convert existing agricultural land to broadleaf woodland, the FAC concluded that there is likely to be a change in biodiversity over time but that this would not be a reasonable ground for setting aside the Minister's decision to grant the licence. The appellant contended that the project lands were in proximity to a raised bog and that potential effects on this site should have been assessed but was not. The DAFM argued that the bog was not designated and that the proposed development would not have any adverse impact on it. Based on the information before it, the FAC concluded that there is no convincing information before it to indicate that the proposed Native Woodland development would be likely to have any significant effect on any designated bog site in the vicinity.

In deciding to affirm the decision of the Minister to grant the licence, the FAC concluded that the proposed development would be consistent with Government Policy and Good Forestry practice.

Yours Sincerely


Pat Coman, on behalf of the FAC