



[REDACTED]

16th December 2020

Subject: Appeal FAC376/2020 regarding licence CN86212

Dear [REDACTED]

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 CN86212 of afforestation of 12.89 ha Finiskil, Drumoghty Beg, Co. Leitrim was approved by the Department of Agriculture, Food and the Marine (DAFM) on 3rd April 2020.

Hearing

An oral hearing of appeals FAC376/2020 was held by the FAC on 11th December 2020. In attendance:
FAC Members: Mr. Donal Maguire (Deputy Chairperson), Mr. Derek Daly, Ms. Mary Lawlor, Mr. Vincent Upton

Secretary to the FAC: Ms. Marie Dobbyn

Appellant's Representative [REDACTED]

Applicant's Representatives [REDACTED]

DAFM Representatives: Mr. Seppi Hona, Mr. 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 set aside and remit the decision of the Minister regarding licence CN86212.

The licence pertains to 12.89 hectares of afforestation with 12.19 hectares of Sitka spruce and broadleaves in a row mixture, 0.43 hectares of downy birch, alder and broadleaves in a group mixture and 0.27 hectares of open area at Finiskil, Drumoghty Beg Co. Leitrim. The proposal includes unplanted setbacks of 60 metres from dwellings and unplanted setbacks from a roadway and watercourse. Site preparation would be through mounding with no additional drainage proposed. Weed control would be

through manual controls without the use of herbicides and 250kg per ha of granulated rock phosphate would be applied. The proposal includes 1,800 metres of stock fencing. The site is described as being in agricultural use with a grass, rush vegetation type on a mineral soil. Existing hedgerows are marked on the application and would be retained.

The licence was approved on 11th June 2020 with the following specific conditions,

- 60 m setback to associated building (garage) adjoining dwelling house.
- 10 rows of Rowan & P. Oak to be planted adjoining dwelling setbacks, 5 rows of same species to be planted along road setbacks. No Alder.
- All guidelines to apply.

There is one appeal against the decision. The grounds contend that the determination of the Inspector in terms of the Requirement for an EIA is inadequately reasoned and that there is no foundation for the conclusion reached and that there has been inadequate consultation with appropriate prescribed bodies. It is submitted that the approval threatens the achievement of the objectives for the underlying waterbody under the River Basin Management Plan for Ireland 2018-2021 and that the cumulative effects with other forestry and non-forestry projects and land uses has not been assessed adequately. It is submitted that the details of the application are not an accurate representation of those required under Regulation 5(2) of the Forestry Regulations 2017. It is submitted that coniferous afforestation of these lands will impact negatively on the value of these High Nature Value land and that this would be contrary to the Rural Development Regulations and that an independent environmental/habitat report should be commissioned. It is submitted that the approval conditions do not provide a general system of protection for all species of birds as would be required under the Birds Directive. Finally, it is submitted that there is a road safety risk and that the road is relatively well used and would not be suitable for a high volume of haulage vehicles.

In a statement to the FAC, the DAFM submitted that the assessment for sub-threshold EIA was carried out correctly and the determination was based on a number of factors including the low forest cover in the waterbody (2.92%), consultation with adjoining dwelling owners and lack of hydrological connection to any Natura 2000 site or other designated areas and that other criteria are outlined in the determination. It is submitted that no external consultation was required in this application and that the DAFM is the competent authority for afforestation. It is submitted that the application will not threaten the achievement of the objectives of the River Basin Management Plan. It is submitted that the site was desk and field assessed and is improved agricultural land previously farmed for cattle and meets the Land Types for Afforestation guidelines on land types eligible for afforestation and that the decision does not breach the Forestry Regulations 2017. It is submitted that if the landowner knowingly damages protected bird species they are possibly in breach of the Birds Directive and Wildlife Act and the appropriate authorities should be notified and that this does not fall under the remit of the DAFM. It is submitted that the landowner has a right to utilise the public road network to access their property and any damage caused during this is a matter between the landowner and the local authority.

An oral hearing of the appeal was held and representatives from each party attended. The DAFM provided an overview of its processing of the application and submitted that the decision was made following procedures. It was submitted that the DAFM is the appropriate authority to assess afforestation that an appropriate assessment screening had been undertaken that identified one site within 15km which had been screened out and that there was no requirement or need to refer this application to other authorities. It was submitted that the District Inspector had met a local resident who had made a submission requesting further information and discussed the proposal and that they are satisfied with the changes proposed in relation to species. It was submitted that the site notice was properly located, that photographic evidence was provided by the Applicant and that the fact that three submissions were made by members of the public is evidence that the site notice was properly located. The Appellant's Representative submitted that the site notice was not clearly visible from the public road. They submitted that the residents referred to by the DAFM are not happy with access across their land. It was submitted that the ownership of the land is uncertain, that scrub should be mapped on the site and assessed and that there is a stream crossing the land which leads to the Eslin (Eskin) river and that the proposal threatens water quality and Lough Rynn. It was also submitted that the public road would be damaged by the operations. The Applicant's Representative read out a statement from the Applicant describing how they considered the land to be difficult to manage for agriculture and that they had planted other areas and were very happy with the outcome. They submitted that they had discussed the planting with residents of the dwelling closest to the proposal. The Applicant's Representative submitted that the proposal would not have a negative impact on water quality and that the current identified pressure on the river was agriculture and that the land was currently in agricultural use. They confirmed that the application includes a 10 metre setback from a watercourse crossing the site and a private laneway. They submitted that the site notice was appropriate and that the proposal was discussed with the residents closest to the proposal and that the planting of broadleaves to the southwest of the house and along the laneway had been agreed. The Applicant's Representative submitted that future extraction would not follow the path marked on the Biomap as the residents were not happy with the land being crossed as their garden had been landscaped and that the Applicant could access the easterly forest block through an existing route to the southeast. They submitted that timber had previously been harvested from adjoining forests and that the local infrastructure was sufficient.

Regarding the issue of the consideration of effects on the environment, including species, the FAC considered the considerations documented by the DAFM in relation to Environmental Impact Assessment and Appropriate Assessment. 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. 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 12.89 ha of agricultural land. The DAFM undertook an appropriate assessment screening of the proposal and found that one site, Cuilcagh-Anierin Uplands SAC, lies within 15km of the site and screened it out on the basis of *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*. This is evidently an error as a watercourse has been identified in the biomap submitted by the Applicant and is marked on historic maps of the area. The proposal itself lies in a separate catchment to the Cuilcagh-Anierin Uplands SAC with no hydrological connection and is 14km to the north at its closest point. This is a large SAC covering 9,735 ha and its qualifying interests are associated with upland areas and there is no evidence before the FAC that the associated QIs, or any other designated habitats or species, have been documented on the proposal site which is described as agricultural land with a grass, rush vegetation type. Regarding water quality, the FAC considered historic Ordnance Survey maps of the area and show a stream flowing to the north-west along the course identified on the biomap. This flows away from Lough Rynn and the stream joins the Eslin River. This river is considered to be at Moderate ecological status and At Risk by the EPA. The primary pressure is listed as agriculture and hydromorphology. The proposal includes a 10 metre setback from the watercourse on the lands which will protect and maintain the existing vegetation within this area and exclude any operations from the land within the setback. The land is described as flat to moderately sloped on a mineral soil type and is currently in agricultural use. The FAC is satisfied that the proposal would not represent a significant threat to water quality and that the DAFM did not err in making the decision in this regard, based on the evidence before it. While one application of fertiliser is proposed, this would not be out of keeping with the current land management practices in the area, and furthermore would be of a slow release type and limited to the establishment stage. The proposal is set back from the public road and is situated in an area that is considered to have a high capacity to accommodate forestry in the County Development Plan and does not have any high value landscape considerations. Traffic is likely to increase during the planting and management of the site but this is considered to be of a temporary nature and would not be out of keeping with land management practices in the general area. There is a dwelling that lies between two parts of the proposal and consultation was undertaken with the residents and measures were implemented regarding species to be planted to the southwest of the house and along the associated laneway, which the FAC considers appropriate and acceptable. The FAC is satisfied that the DAFM considered the proposal across a range of criteria and documented the reasons for determining that the proposal should not proceed to EIA and does not consider that a serious or significant error occurred in the EIA determination.

In regard to general protections of bird and other species, the FAC considers that the granting of the licence does not exempt the holder from meeting any legal requirements set out in any other statute. The FAC's legal remit does not extend to funding mechanisms related to forestry. The management of the public road network falls to local and roads authorities. Regarding consultation with prescribed bodies, the FAC does not consider that there was any requirement to refer the proposal to any other body having regard to the scale, nature and location of the proposal, and in particular its degree of separation from any designated site, and that the DAFM did not err in this regard.

At the oral hearing it was agreed by all parties that part of the access route closest to the dwelling situated between two parts of the proposal and identified on the submitted Biomap does not represent the likely access route as this has not been agreed with the land-owners. While the FAC recognises that the application and subsequent licence does not provide any legal right to anyone to undertake an activity on land that they do not own, it is a requirement to identify access routes under section 5.3 of the Forestry Standards Manual. As consultation was undertaken with the residents and as this issue was discussed and agreed the FAC considers that the DAFM should have required an amended Biomap to be submitted identifying the expected access route and that this represents an error.

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 satisfied that a series of errors was made in making the decision. The FAC is therefore setting aside and remitting the decision of the Minister to approve licence CN86212 in line with Article 14B of the Agricultural Appeals Act 2001, as amended, to undertake and document a new appropriate assessment screening of the proposal and to require the submission of an amended Biomap in line with the requirements of the Forestry Standards Manual and to the satisfaction of the DAFM before a new decision is made.

Yours sincerely,

A large black rectangular redaction box covering the signature of Vincent Upton.

Vincent Upton On Behalf of the Forestry Appeals Committee

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