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29th January 2021

Subject: Appeal FAC409/2019 & FAC461/2019 regarding licence CN84879

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 has now completed an examination of the facts and evidence provided by all parties to the appeal.

Background

Licence CN84879 concerning the afforestation of 4.73 ha of land in Greagheragh More Glebe, Co. Leitrim was approved by the Department of Agriculture, Food and the Marine (DAFM) on the 21st of April 2019.

Hearing

An oral hearing of appeals FAC 409 & 461 of 2019 was held by the FAC on the 8th of January 2021.

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]

Appellant [REDACTED]

Applicant: No representative present

DAFM Representatives: Mr. Martin Regan, 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 set aside and remit the decision of the Minister regarding licence CN84879.

The licence pertains to 4.73 hectares of afforestation of mostly Sitka spruce and some broadleaves at Greagheragh More Glebe, Co. Leitrim. The predominant soil type underlining the project area is predominantly podzols in nature. The slope is predominantly flat to moderate (<15%). The vegetation type within the project area is comprised of grass and rushes.

The licence was approved on 21st of November 2019 with the following specific conditions,

- Retain all hedgerows and enhance with planting 3 rows of appropriate Native Broadleaf Species on each side as appropriate.,
- No conifers within 30m of public road and plant additional broadleaf species as appropriate.,
- Adhere to forestry & water quality guidelines
- All guidelines to apply.

There are two appeals against the decision. It is submitted, by one of the appellants that the approval conditions do not provide a general system of protection for all Annex 5 species of fauna as would be required under Article 12 of the Habitats Directive, bats in particular were cited in this instance. It was also submitted that the project fails to meet the biodiversity objectives of the 'Environmental Requirements for Afforestation' and that the development does not comply with the Forestry Regulations.

The second appellant contended that the project would result in a loss of biodiversity and cited bats, hen harriers and trout as species that might be affected. They also contended that the project is contrary to the 'County SEA' and that the project would cause disruption of 'hydrological connectivity'.

In a statement to the FAC, the DAFM submitted that they had carried out desk-and-field-based assessments of the application They stated that there was no hydrological connection to any Natura 2000 site or other designated areas and that the land concerned meets the 'Land Types for Afforestation' guidelines on land types for afforestation and that their decision is in line with the Forestry Regulations 2017. The DAFM submitted that the development was within 15km of the Cuilcagh-Anierin Uplands SAC, but that they had screened it out for stage 2 assessment as there was no connectivity.

An oral hearing of the appeal was held. The DAFM provided an overview of its processing of the application and submitted that the decision was made following the required procedures, with the exception that no 'in-combination' assessment had been carried out. The DAFM representatives were not able to explain why this assessment stage had been omitted from their considerations. The inspector informed the FAC that an appropriate assessment screening, backed up by a site visit had been undertaken, which had identified one protected site within 15km, and that it had been screened out. As a result, DAFM contended that there was no requirement or need to refer

this application to other authorities. The DAFM also contended that they had considered the issue of disturbance to bats in their assessment and the requirement to have rows of broadleaved trees planted alongside the existing hedgerows would cater for this issue, as it would preserve the linear features important for bat navigation.

As well as expressing concerns about disturbance to bat populations and other matters, the appellants present at the hearing raised the issue of whether or not the site notice had been appropriately displayed, as required, during the public notice period. He cited e-mail correspondence with the Forest Service, whereby he had brought it to their attention that on more than one occasion he had passed by the specified location of the site notice but could find no sign of it. The DAFM representatives acknowledged this exchange of correspondence and contended that they had raised the matter with the applicant's forester and had been informed that the notice had been replaced.

The FAC considered the process documented by the DAFM in undertaking an appropriate assessment screening of the proposal and the finding that the Cuilcagh-Anierin Uplands SAC, lies within 15km of the site. The FAC concurred with the DAFM action of screening 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, bolstered by the fact that the inspector had carried out his own field inspection.

There was no specific evidence placed before the FAC that the associated QI's of the SAC, or any other designated habitats or species, have been documented as occurring on the proposal site, other than bats and thus did not see the proposal as a threat to the maintenance of biodiversity. All hedgerows would be retained as part of the proposal and planting of native broadleaves is required in proximity to the hedgerows. The land is submitted to be enclosed agricultural land with a grass, rush furze vegetation type and currently used for livestock. The proposal lies some 120 metres at its closest point to the Yellow River, no evidence was provided to the FAC of a direct hydrological connection with the River and the licence requires adherence with forestry guidelines. The FAC is satisfied that the proposal would not represent a significant threat to water quality or 'hydrological connectivity' and that the DAFM did not err in making their decision in this regard.

The FAC also accepted that the DAFM had taken account of the possible impact on bats in their determination. Concerning the issue of the proposal possibly having an adverse impact on the 'County SEA'; the FAC took this to refer to the SEA associated with the Leitrim County Development Plan (CDP), but as no specific evidence was cited in the written grounds or in response to questioning at the oral hearing. As part of the SEA process undertaken for the CDP a Leitrim Landscape Character Assessment Report was considered which also identified the sensitivity of areas to the accommodation of afforestation. These maps would suggest that the proposed planting is not situated within an area of High Visual Amenity or Outstanding Beauty or

a low capacity to accommodate forestry. The FAC did not consider that any evidence was provided to it of the proposal being in contradiction to the plan or its SEA. However, the FAC is of the view that the DAFM erred in not following the required procedure by their failure to fully complete the AA screening by omitting the 'in-combination' element.

With regard to the issue of the display of the site notice, the FAC felt it inappropriate to take a position on the matter as evidence had been provided that a notice had been erected in the first instance and that DAFM had acted appropriately in bringing the issue to the attention of the applicant's forester. It was evident from the fact that two appeals had been raised with regard to this application that there had been a reasonable level of local awareness of the application and that it had not been kept hidden from the public.

In regard to general protections of bird and other species, the FAC considers that the granting of an afforestation licence does not exempt the holder from meeting any legal requirements set out in any other statute.

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 serious error was made in making the decision due to the fact that no 'in-combination assessment was undertaken. The FAC is therefore setting aside and remitting the decision of the Minister to approve licence CN84879 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 to the satisfaction of the DAFM before a new decision is made.

Yours Sincerely

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

Donal Maguire On Behalf of the Forestry Appeals Committee
