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23rd February 2021

Subject: Appeals FAC 152/2019, 154/2019, 157/2019, 158/2019, 159/2019, 160/2019, 162/2019, 164/2019 and 166/2019 regarding licence CN81847

Dear [REDACTED]

I refer to the appeals 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 CN81847 for afforestation of 5.92 ha at Lissaniska, Co. Mayo was approved by the Department of Agriculture, Food and the Marine (DAFM) on 30th May 2019.

Hearing

An oral hearing of appeals FAC 152/2019, 154/2019, 157/2019, 158/2019, 159/2019, 160/2019, 162/2019, 164/2019 and 166/2019, of which all parties were notified, was held by a division of the FAC on 15th February 2021.

In attendance:

FAC Members:	Mr. Myles Mac Donncadha (Chairperson), Mr. James Conway, Mr. Seamus Neely and Mr Derek Daly.
Secretary to the FAC:	Ms. Emma Guerin.
Appellants	[REDACTED] [REDACTED]
Appellants Representative:	[REDACTED]
Applicants Representative:	[REDACTED]
DAFM Representatives:	Mr. David Ryan and 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 regarding licence CN81847 back to the Minister.

The licence decision pertains to the afforestation of 5.92 ha at Lissaniska, Co. Mayo. The land is described in the Appropriate Assessment screening form as having a slope which is predominantly flat to moderate (<15%) with the underlying soil type being predominantly podzolic and the project area is described as being crossed by / adjoining an aquatic zone and is located in the Moy_100 SC. An examination of the EPA/WFD mapping available online shows that the nearest mapped river waterbody (which is in an adjacent sub basin, id IE_WE_34C060200) is the Corroy_010 waterbody and is to the north west of the project site. The site is indicated as being in the same sub-basin (ID IE_WE_34M020850) as the Moy river which lies approximately 900m to the east of the site. However, due to the presence of a railway line and the topography of the area it is highly unlikely that there is a hydrological connection in this direction and the next nearest mapped waterbody within the same sub-basin is a Moy tributary approximately 5km south of the project site and for which the WFD status was recorded as 'good' during the 2013-2018 assessment. The proposed species are a mix of Sitka Spruce (circa 55%) and a mixture of Scots Pine, and Broadleaf including Oak. The project was referred to Mayo County Council and An Taisce and no response is noted on file from either. The file records that the project was referred to the NWRFB (which has been subsumed into Inland Fisheries Ireland and who are generally contactable at the same address). The DAFM confirmed that the application was subject to a field assessment on 12TH September 2018 which resulted in a request for further information to the applicant seeking the exclusion of some lands from the proposal. DAFM indicated that a second request for further information subsequently issued seeking information to address concerns raised by 3rd parties / neighbouring properties. The DAFM representative provided an overview of measures included in the licence and intended to meet concerns raised in relation to the application including the incorporation of planting setbacks and the inclusion of broadleaf trees in certain areas of the site.

The DAFM recorded an Appropriate Assessment screening of the proposal and determined that it did not require an Appropriate Assessment. DAFM also confirmed that the Appropriate Assessment process used at the time assessed Natura 2000 Sites within a 3km radius. It further recorded a consideration of the application for EIA and determined that it did not require an EIA. The approval was issued on 30th May 2019 with a number of conditions attached.

Nine appeals were lodged against the decision (FAC 152,154,157,158,159,160,162,164 & 166/2019) which submitted grounds including those summarised below;

- Grounds of appeal FAC 152/2019 include; concerns regarding forest fires, access route for fire engines, visual impact of the project, and property devaluation,
- Grounds of appeal FAC 154/2019 include; submission that that project will be out of character in the area, submits there will be a permanent loss of agricultural land, submits that soils will be dried out and raised concerns regarding invasive species, submits reduction in local biodiversity, submits negative impact on residential amenity, potential for fires, impact on house insurances & valuation, concerns regarding the likely impact on European Sites and on watercourses hydrology & groundwater, submits contravention of County Development Plan, submits cumulative impact not considered, and submits likely impact on River Moy SAC not considered,

- Grounds of appeal FAC 157/2019 include; submission that project will be out of character in the area, submits loss of agricultural land, submits that soils will be dried out, concerns regarding invasive species and the impact on wildlife / watercourses / River Moy, the potential for fires, impact on house insurances & valuation, and submits contravention of County Development Plan,
- Grounds of appeal FAC 158/2019 include; submission that development will be unsightly from the back window of the house, that surrounding residents are unhappy with the project, and references content of original objections as submitted to DAFM,
- Grounds of appeal FAC 159/2019 include; proximity to their home, acknowledges the need to reduce greenhouse gases, submits that afforestation at this location is inappropriate, concerns regarding fire risk, concerns regarding insurance cover / cost and regarding the impact on river Moy and European Sites, and raises concerns of impact on natural light,
- Grounds of appeal FAC 160/2019 include; proximity to home and property valuation, concerns regarding fire safety / risk, submits concerns of impact of the afforestation on the local hydrology, submits that the project will block light, submits that afforestation at this location is inappropriate, and concerns regarding insurance cover / cost,
- Grounds of appeal FAC 162/2019 include; submission that it is an inappropriate Location for Afforestation, submits there will be a permanent Loss of Agricultural Lands, concerns regarding the impact on Existing Watercourses, submits that there will be a negative Impact on Residential Amenity, concerns regarding fire safety and impact on house insurance, submits that there will be a reduction in Local Biodiversity, raises impact on adjoining European Sites, concerns that cumulative impact not considered, and submits contravention of County Development Plan,
- Grounds of appeal FAC 164/2019 include; submission that it is an inappropriate Location for Afforestation, submits there will be a permanent Loss of Agricultural Lands, raises impacts on existing watercourses, submits that the project will reduce natural light to their home, concerns regarding the impact on Existing Watercourses, submits that there will be a negative Impact on Residential Amenity, concerns regarding fire safety and impact on house insurance, submits that there will be a reduction in Local Biodiversity, raises impact on adjoining European Sites, concerns regarding impact on River Moy (SAC), concerns that cumulative impact not considered, and submits contravention of County Development Plan,
- Grounds of appeal FAC 166/2019 include: submission that the public road is too narrow, that road is already very busy, asks that the Forestry proposal for Lissaniska East be withdrawn, and submits that natural light will be reduced at certain properties.

In the statements provided to the FAC, the DAFM submitted that the decision was issued in accordance with procedures SI 191/2017 and the 2014 Forestry Act. A separate statement was provided to the FAC in response to the grounds for each of the submitted appeals. At the oral hearing the DAFM Representatives submitted that the application was processed following procedures in place at the time including that the Appropriate Assessment screening was carried out on European Sites within a 3 km radius of the project and confirmed that the application was subject to a site visit / assessment on 12th September 2018. The DAFM representative also confirmed that the information submitted by the applicant, including maps and other details, were considered in processing the application.

At the oral hearing Mr Eddie McDonnell introduced Gary McGinty to present on behalf of the appellants. Mr McGinty began by confirming that he was commissioned to represent all the appellants in this case. He contextualised the range of the submitted grounds of appeal and proceeded to make more specific reference and submission on some of the grounds. He described the location of the project between two Natura 2000 sites, described the project site as elevated and submitted that the project is not in compliance with the County Development Plan (CDP) on the basis of his view that the CDP is not in favour of forestry at the location. He submitted that he had concerns about the screening done as part of the assessment of the project arising from a failure to take account of all the likely significant effects that might arise. He referenced inaccuracies in the process citing that some of the Natura 2000 Sites are much closer to the project than as recorded in the screening. He submitted that forestry was cited as a key concern in the River Basin Management Plan as it relates to the area in which the project is located. Mr. McGinty queried the 'zero' entries in respect of some of the questions regarding the percentage of forestry cover in place for the townland (and within 500 metres) at the time of assessment and also for the amount including that which is approved but not yet planted. He submitted that the existence of forestry in the area is visible on aerial imagery on publicly available websites. He also queried the response at question 10 (which makes reference to cumulative effects) having regard to the 'zero' entries in earlier questions and submitted that there was no evidence that Killala Bay SAC had been considered. He submitted that the project site is in an area which is shown in GSI mapping as being extremely vulnerable to groundwater impacts by human activities. In mentioning that three houses overlook the site and while submitting that there is no right to view he submitted that there is a relevant consideration in relation to visual amenity in this case, as the proposal could dominate these houses. He submitted that the plantation in the area would result in a new risk that would have to be disclosed by property owners when seeking insurance and that this was likely to result in additional costs in respect of insurance cover.

At oral hearing Ms Sarah Standish, representing the applicant, described the approach to formulating the application which comprised both desk and field work. She submitted that the CDP had been carefully considered in that process and made reference to the mix of native woodland species as included in the licence in this case. She confirmed having considered the potential hydrological connectivity of the project to Natura 2000 Sites and offered an opinion that screening out the project for Appropriate Assessment was the correct decision. In response to a query at oral hearing a number of responses were made in relation to where water from the site drains to which included a commentary that the fall of the site is to the north. In response to a query as to the current use of the site the applicant's representative submitted that it was mainly used as grazing for horses and referenced scrub, whins and briars coming out on to the land. Mr. Eddie McDonnell, an appellant in this case, submitted that a lot of work had been done recently on the land to clean it up, erect new fencing, clean drains and re-seed quite a bit of it.

Regarding Environmental Impact Assessment (EIA) and related matters in the grounds, 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. In the part of the inspector's certification report available on file dealing with the assessment to determine EIA requirement (which included the questions on the extent of existing forestry cover in the area up to 500m from the project and similar questions on existing or approved planting projects in the same area) a number of the relevant fields were blank. Responding, the DAFM representative indicated that the screening was carried out at certification stage, that the answers to those questions would have been known to the author of the screening but that the current absence of entries for those questions was due to the implementation by DAFM of an update to the IT-assisted AA screening process since the time when these data were first calculated. The information necessary to answer the said questions, upon which the answers to questions 10 & 11 are dependant, was not available at oral hearing. This omission in the screening record on file at the time of oral hearing, which is relied on to determine the need for an EIA, is considered by the FAC to be an error in this case. While these missing data may have been known to the author of the screening report at the time of the decision, the error is regarded as significant, particularly given the absence of a consideration of other plans and projects in combination with the proposal on the file, and closely relates to some of the submitted grounds namely cumulative effect and water and to some of the elaboration on the grounds at oral hearing in this case. While noting the submissions made by DAFM at the oral hearing, the FAC concluded that a new assessment to determine whether an EIA is required should be undertaken regarding this proposal.

The DAFM undertook and documented an appropriate assessment screening of the proposal dated 17th April 2019 that did not identify any overlap of the zone of influence of the project with any Natura 2000 site and the project was screened out for AA purposes having established that the River Moy SAC 002298 and the Lough Conn and Lough Cullin SPA 004228 lay within 3km of the project area. Both sites were screened out for the reasons described on the Appropriate Assessment Screening form available on the file and therefore the project did not proceed to Appropriate Assessment. In considering these matters as they relate to the elaborations on the grounds of appeal at oral hearing the FAC noted the response it received from the DAFM to a correspondence wherein it states;

'When the Forest Service of the Department of Agriculture, Food and the Marine, first assessed the likely effects of this proposed development on the local receiving environment it did take into consideration standards of good forest practice, and more specifically when applying the Appropriate Assessment Procedure then in use to carry out an Appropriate Assessment Stage 1 screening in respect of the proposed development, it also took those same standards of good forest practice into its consideration as mitigation measures in terms of their potential to avoid or reduce the likely effects of the proposed development on the integrity of any Natura 2000 sites in view of those sites' conservation objectives. Therefore, if the application was screened again today, under the revised Appropriate Assessment Procedure currently in use, it would not be screened out'.

The FAC is satisfied that this constitutes a serious error in the making of the decision and while noting the submissions made by DAFM at the oral hearing, the FAC concluded that a new screening of the application for Appropriate Assessment is required and should be undertaken regarding this proposal. In relation to the grounds raised regarding fire risks and costs of insurances for neighbouring properties the FAC

considered the submissions made by DAFM and including at the oral hearing in relation to the revisions made to the proposal such as diversification of species and provision of setbacks. Having regard to revisions made in the course of the assessment by DAFM, and that the requirements of the DAFM *Forestry Standards Manual (November 2015)* in relation to fire risk have been followed by the Inspector, and while noting that there is no high-risk bogland connected to the site, and that the prescribed setback requirements have been met, the FAC is satisfied that DAFM have adequately addressed these matters (fire and insurance) in this case. In relation to the various grounds generally regarding the impact of the development on light to properties, views, residential amenity and the potential shade caused by the forestry as it matures, the FAC, while noting the assertion of the DAFM representative regarding the setbacks and diverse species used in the revised proposal, along with the removal of the plot north of the railway line for planting, considered that DAFM has adequately addressed these matters in this case.

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 or series of errors was made in making the decision and is setting aside and remitting the decision back to the Minister to carry out a new assessment to determine whether the application should be subject to the EIA process under the EU EIA Directive and to undertake an Appropriate Assessment screening of the proposal itself and in combination with other plans or projects under Article 6 of the EU Habitats Directive before a new decision is made.

Yours sincerely,

A large black rectangular redaction box covering the signature of the official.

Seamus Neely On Behalf of the Forestry Appeals Committee