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16 July 2021

Subject: Appeal FAC 034/2021 regarding licence CN85518

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 14A (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 CN85518 for afforestation of 16.1ha and fencing of 2,250 m, in Muingwore, Co Sligo was approved by the Department of Agriculture, Food and the Marine (DAFM) on 2 February 2021.

Hearing

A hearing of appeal FAC CN85518 of which all parties were notified, was held by a division of the FAC on 15 July 2021.

In attendance

FAC Members: Mr Des Johnson (Chairperson), Mr Luke Sweetman and Mr Seams Neely
Secretary to the FAC: Mr Michael Ryan

Decision

The Forestry Appeals Committee (FAC) considered all of the documentation on the file, including application details, processing of the application by the Department of Agriculture Food and the Marine (DAFM), the grounds of appeal, and all other submissions, before deciding to affirm the decision to grant this licence (Reference CN 85518).

The proposal is for afforestation and 2250m of fencing on a stated site area of 16.1ha at Muingwore, Co. Sligo. There are 8 plots. Planting would be 90% Sitka spruce and 10% Broadleaves. Soils are stated to be mineral, peat. The site is at 50-60m, exposed and moderately exposed. These are enclosed lands with a neutral aspect. Existing vegetation is grass, grass rush, furze. Ground preparation would include woody weed removal, and mounding. Slit planting is proposed.

The DAFM referred the application to the North Western Fisheries Board. Inland Fisheries Ireland (IFI) responded stating that the lands run adjacent to the Brusna River which provides important salmon and trout spawning and nursery habitat. The Brusna River is under environmental pressure and

salmon stocks are below their conservation limit. The river is closed to angling to allow it to recover. The Brusna forms part of the River Moy SAC which is designated for Atlantic Salmon, White-clawed Crayfish and Lamprey species. This catchment has been allocated 'Good' ecological status in the River Basin Management Plan (RBMP) and requires protection to maintain this status. Recommended conditions if the licence is to be granted are as follows:

- Adhere to Forestry and Water Quality Guidelines
- Aquatic buffer zone of a minimum 15m must be established along all watercourses with additional planting of 2 rows of suitable native trees outside this
- Soil tests to be undertaken to determine if the site is suitable for the protection of a mature crop without the need for excessive fertiliser
- IFI favours planting with native tree species
- Ground works should not be carried out when soils are saturated or during wet weather conditions
- Forestry machinery must not travel through drains/streams
- Specified requirements for the removal and disposal of material from the site.

The Inspector's Certification noted that the application was field, and desk assessed. The site is not prone to flooding, not acid sensitive, not within NHA, pNHA, SAC, SPA or National Park, not within FWPM catchment, not in Prime Scenic Area as per the CDP and there are no high amenity considerations. The area is sensitive to fisheries. There are no archaeological sites or features on the project lands. No drainage is required, and road access is available. Soils are predominantly highly modified peats and peaty podzols, the slope is predominantly flat to moderate, and the site is crossed by/adjoins an aquatic zone. An Appropriate Assessment Screening assesses Natura 2000 sites within a 15km radius. Sites screened out for Stage 2 Appropriate Assessment are Killala Bay/Moy Estuary SPA, Lough Hoe Bog SAC, Lough Nabrickkeagh Bog SAC and the Ox Mountains SAC. Reasons for this conclusion are the downstream location and lack of hydrological connectivity for the SACs, and separation distance in respect of the SPA. Sites screened in for Stage 2 Appropriate Assessment are Killala Bay/Moy Estuary SAC, and the River Moy SAC, for reason of direct hydrological connectivity and the Otter. There is approximately 1.45% forest cover in the townland, approximately 8.65% within 5kms, and approximately 0.6% in the underlying waterbody. There would be no impact on any Way-Marked Way, no impact on any densely populated area, and the area is not commonly used by the general public for recreation.

An Appropriate Assessment Report (AAR) was prepared by Fehily Timoney & Co. and is dated 25.01.2021. This notes that Plots 1, 3, 4, and the northern half of Plot 2, the eastern/south-eastern/southern portions of Plot 7, the majority of Plot 8, and the south-western portion of Plot 6 are on peat soils. The remainder of the lands are underlain by well drained coarse loamy drift with limestones. Small portions of Plots 3 and 4 are susceptible to pluvial flooding. The project lands are in the Sub-Basin Brusna (North Mayo)_010, and the Sub-catchment in the Glenree SC_010. The River Brusna borders the eastern side of Plot 1, and two of its tributaries border the north-eastern and southern/south-eastern boundaries. The north-eastern end of Plot 7 is bordered by a tributary of the River Brusna. These watercourses represent direct hydrological linkage with the River Moy SAC (c. 9.8km), Killala Bay/Moy Estuary SAC (c. 17.1km) and Killala Bay/Moy Estuary SPA (c. 18.9km). Stage 2 Appropriate Assessment is carried out for the River Moy SAC, the Killala Bay/Moy Estuary SAC and the

Killala Bay/Moy Estuary SPA. Qualifying interests and conservation objectives are listed, and there is an examination of the potential for adverse effects arising from the proposed development. Mitigations are recommended in respect of water setbacks, silt and sediment control, temporary water crossings, control of operations and storage of chemicals, the disposal of waste, and the Otter. An Appropriate Assessment Determination (AAD) was prepared by Fehily Timoney & Co. and is dated 25.01.2021. The AAD confirms screened out sites – Ox Mountains SAC, Lough Hoe SAC, and Lough Nabrickkeagh Bog SAC, and also confirms the screened in sites – the River Moy SAC, Killala Bay/Moy Estuary SAC, and Killala Bay/Moy Estuary SPA. The AAD determines that the proposed development, individually or in combination with other plans or projects, will not adversely affect the integrity of listed European sites, having regard to their conservation objectives, and will not affect the preservation of the sites at favourable conservation status, if carried out in accordance with specific mitigation measures, relating to:

- Water setbacks
- Silt and sediment control
- Temporary water crossings
- Control of operations (including timing)
- On-site storage of chemicals, fuels etc
- Disposal of waste
- The Otter
- Adherence to Environmental Requirements for Afforestation (DAFM 2016), and Forestry Standards Manual (DAFM 2015).

The AAD concludes that no reasonable scientific doubt remains as to the absence of any adverse effects on the integrity of any European site.

Approval was granted dated 02.02.2021, subject to standard conditions plus:

- All mitigations set out in the AAD and AAR must be adhered to
- Relevant setbacks from domestic dwellings to be adhered to. Additional broadleaves to consist of birch and rowan
- Contact the IFI prior to operations
- Adhere to Forestry and Water Quality Guidelines
- Adhere to Environmental Requirements for Afforestation.

There is a single appeal against the decision to approve the proposed development. The appellant states no objection in principle to planting but contends that planting of Plot 4 would completely remove his view of the Stokane Road and consideration needs to be given to the impact on his house. The appellant requests a 50m setback in Plot 4 from the public road.

In response, the DAFM state that the setback from the appellant's domestic dwelling is a matter between the applicant and the appellant.

The FAC held a hearing of the appeal on 15 July 2021. The Committee considered, in the first instance, if the procedures leading to the making of the decision to grant the licence for the proposed development were consistent with the EIA and Habitats Directives. The proposed development is for the afforestation on a stated site area of 16.1ha. Afforestation is a class of development covered by

the EIA Directive and the transposing Regulations but is significantly sub-threshold for mandatory EIA. The FAC noted that the DAFM had screened the proposal for EIA and concluded that EIA was not required. The FAC considered that the DAFM had adequate information before it in respect of the description of the proposed development, the location, and the nature and characteristics of potential impacts, in order to carry out EIA screening, and the FAC found no reason to find that the conclusion that EIA is not required to be incorrect. In regard to the requirements of Article 6(3) of the Habitats Directive, the FAC noted that the DAFM had carried out screening and an AAR, leading to an AAD. Mitigation measures listed in the AAD were carried forward as conditions of the approval granted.

Addressing the written grounds of appeal, the FAC noted these related to Plot 4, and to the potential impacts on the appellant's house. It is a requirement of the licence that the proposed development must be carried out in accordance with the Forestry Standards Manual. The Manual specifies a 60m setback from dwelling houses, or 30m with the written consent of the owner. For public roads there is a requirement for a 20m setback for Conifer plantations, with 10m unplanted setback from the edge of the carriageway, and then 10m of Broadleaves or groups of Broadleaves, before the first row of Conifers. The FAC noted that the Manual allows for increased setbacks for landscape reasons but considered that there were no convincing specific landscape reasons in this case to require an increased setback in Plot 4 as requested by the appellant. In these circumstances, the FAC concluded that there was no significant or serious error in the making of the decision by the Minister to grant the licence for the proposed development.

The FAC concluded that no significant or serious error was made in the making of the decision to grant the afforestation licence (CN85518). In deciding to affirm the decision of the Minister, the FAC considered that the proposed development would be consistent with Government policy and Good Forestry practice.

Yours sincerely

A black rectangular redaction box covering the signature of Des Johnson.

Des Johnson, on behalf of the Forestry Appeals Committee