



[REDACTED]

11th May 2021

Subject: Appeal FAC 631/2020 regarding licence CN83691

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 CN83691 for afforestation of 4.0ha at Toormore Co Clare was approved by the Department of Agriculture, Food and the Marine (DAFM) on the 24th of July 2020 with conditions.

Hearing

A hearing of appeal FAC 631/2020 was held by the FAC on 4th May 2021.

In attendance:

FAC Members: Mr. Des Johnson (Chairperson), Mr. Donal Maguire Mr. Dan Molloy

Secretary to the FAC: Mr. Michael A Ryan

Appellant: [REDACTED]

Applicant: [REDACTED]

DAFM Representatives: Ms. Mary Coogan, Mr. Kevin Keary and Mr. Alan Booth

Decision

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notice of appeal, submissions made including those at the oral hearing, and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister regarding licence CN83691.

Background

The licence pertains to a proposal to plant 4.0ha of commercial forest in the north east of Co Clare. The application was submitted on the 28.3.2019. This project lies in a rural landscape in Toormore, Co Clare in the River Sub Basin Kilmore North Stream_010. The River Sub Basin Kilmore North Stream_010 has approximately 26% forest cover which is higher than the national average of 11%. At 4 hectares, the project is considered small in scale by the DAFM. The site is described as being located on the side and top of a dry drumlin at about 90m of elevation. The proposal is to plant GPC3 mixture of trees as this is seen as the most suitable for this particular location. It is felt by the foresters that the site is too cold and exposed for the successful planting of quality broad leaf species. There are ESB power lines transecting the proposed plantation which have the effect of breaking it up into three plots. There are existing mature plantations of conifers to the east and west south west of the site, the southern aspect is clear of planting across a wide arc. A minor public road runs along the western boundary of the site.

The DAFM undertook and documented an Appropriate Assessment screening and identified a number of Natura sites within 15kms of the proposed development. These were: Moneen Mountain SAC 000054, Ballycullinan Lake SAC 000016, Inagh River Estuary SAC 000036, Ballycullinan, Old Domestic Building SAC 002246, Ballyteige (Clare) SAC 000994 , Old Farm Buildings, Ballymacrogan SAC 002245, Toonagh Estate SAC 002247, Black Head-Poulsallagh Complex SAC 000020, Ballyogan Lough SAC 000019, Moyree River System SAC 000057, Ballyallia Lough SPA 004041, East Burren Complex SAC 001926, Dromore Woods And Laughs SAC 000032, Ballyallia Lake SAC 000014 and Corofin Wetlands SPA 004220. With the exception of the Corofin Wetlands SPA, the rest were screened out due to the lack of any pathway, hydrological or otherwise, between the development and the qualifying interests of the protected sites. The file was referred to the DAFM ecological service and an Appropriate Assessment Determination (AAD) report was provided by them on the 21.7.2020.

The ADD concluded *inter-alia* that while Whooper swan is a Special Conservation Interest (SCI) species of the Corofin Wetlands SPA 004220 and it may potentially use the habitats present within the application area for foraging during the winter, the agricultural/ wet grassland habitat that they use is common and widespread in the locality and the loss of 4ha of these habitats within the afforestation site will not have an adverse effect on the conservation status of this species. They also noted that there is no hydrological connectivity between the application and the Natura sites.

The AAD concluded that 'No mitigation is required. However, the proposed works shall adhere to the Environmental Requirements for Afforestation, December 2016 (DAFM, 2016) and Forestry Standards Manual (DAFM, 2015)'.

An in-combination assessment was carried out, dated the 10.6.2020 and it concluded that: 'Individually, the project does not represent a source, or if so, has no pathway for an effect on Corofin Wetlands SPA (004220). Consequently, the DAFM deems that there is no potential for the project to contribute to any effects, when considered in-combination with other plans and projects.'

Furthermore, it is considered that the regulatory systems in place for the approval, operations (including any permitted emissions) and monitoring of the effects of these other plans and projects are such that

they will ensure they too do not cause environmental pollution or give rise to direct or indirect effects on the integrity of any Natura 2000 sites in view of those sites' conservation objectives.'

The site does not contain nor is it contiguous with any recorded monuments but there is evidence of a possible historic farmhouse and a limekiln on site and these features are to be preserved.

The application was not referred to any external referral bodies but was referred to the DAFM Archaeologist who in a report dated 26.8.2019, attached conditions for setbacks and archaeological monitoring.

The application approval was issued on 24th of July 2020 with specific conditions. The additional environmental and silvicultural conditions were:

- Orient Mound drains away from the dwellings to the South West of the application area, possibly onto the land occupied by the ESB power line corridors,
- Adhere to the mitigation measures in the attached Appropriate Assessment Determination report regarding Natura 2000 sites
- Ensure site is adequately fenced.
- A small exclusion in the South East of the site had been made and must be adhered to
- For dwelling Houses/Buildings the setback is to be 60m
- For the public Road the setback is to be broadleaves at 10m, conifers at 20m

There is one appeal against the decision. In summary and *inter-alia* the grounds submit that:

- The proximity of the proposed afforestation area to existing planted and maturing forests will result in the appellant's property being effectively surrounded on three sides by spruce plantation and that the density of forest planting in the locality is already much higher than the national average. Also, that the ADD contains an error concerning the issue of 'adjoining forestry'.
- That there may be negative impacts on biodiversity
- That there will be limitations on alternative uses of the land, post-felling, of the proposed crop
- That there may be a devaluation of the appellant's property, if the proposed development proceeds
- Various issues concerning national commercial forestry policy were cited

In a statement to the FAC, the DAFM submitted that it is satisfied that their standards and procedures were adhered to in making the decision. The statement outlines the processing of the file including the preparation of an Appropriate Assessment Determination and noting that the site had been both desk and field assessed and inspected.

An oral hearing of the appeal was requested by the Appellant and held on the 7th May 2021 and all parties were notified. Representatives of the DAFM attended. During the oral hearing the DAFM again provided an overview of their processing of the application. It was submitted that the site had been field inspected by the DAFM Forest Service Inspector. The information supplied by the applicant, the AAD, other assessment measures and a wide range of checks and balances employed by the DAFM in considering the application were described.

In the first instance, the FAC considered the grounds concerning the appellants submission that their dwelling would be encroached on three sides by forestry should the development proceed. The applicant's representative submitted that the landowner had refrained from applying for permission for the whole of his property in this locale, which amounted to 6.97ha, to maximise the setbacks from the appellant's dwelling and that the actual setbacks, should the development proceed, would be well in excess of the 60m stipulated in the licence. The applicant also submitted that there was a mound or ditch to the rear of the appellant's property which would largely conceal the planting from their perspective and reassured the hearing that the planned afforestation would not create any flooding issues whatsoever for the appellant and would in fact intercept runoff from the higher ground behind the appellant's dwelling.

The appellant submitted that they did not want to find their property surrounded on three sides by forestry, that the existing forestry had not been well managed, leading to various problems and that there was, in their view, already enough planting in the vicinity. The appellant acknowledged that their southern aspect would not be negatively impacted and that they had not included loss of sunlight in their grounds because of this. They did express concern that at some point in the future that there might be an application to plant trees in this area also. The FAC noted these concerns, while also noting that any proposal for afforestation of these lands would have to be the subject of an application for separate licence. Concerning the statement in the AAD, concerning 'adjoining forests', the author of the report confirmed to the FAC that this was a clerical error on his part and that he was fully aware of the actual situation in making his assessment.

Following some discussion concerning the issue of possible impacts on biodiversity, on the whooper swan and unspecified ducks and other birds, the appellant stated that they wished to withdraw that element of their grounds of appeal.

The applicant and the DAFM submitted that the lands would be replanted once the planned crop had grown to maturity and that it was planned that these lands would stay as commercial forestry in perpetuity, as envisaged in National Policy.

The FAC considered the ground that the appellant might see a drop in the value of their property should the project proceed. The FAC noted that the appellant was not able to educe any systematic or documentary evidence to substantiate the claim.

During the course of the hearing, it was pointed out to the parties that the FAC was not a policy forming body and that its primary function was to assess the decision made by the Minister to ensure that all proper procedures had been followed in arriving at that decision.

In considering the appeal the FAC had regard to the record of the decision, the submitted grounds of appeal, and submissions received. The FAC is not satisfied that a serious or significant error or a series of errors was made in making the decision or that the decision was made without complying with fair procedures. The FAC is thus affirming the decision of the Minister regarding licence CN83691 in line with

Article 14B of the Agricultural Appeals Act 2001. In affirming the decision, the FAC considered that the application would be consistent with Government Policy and Good Forestry Practice.

Yours sincerely,

A black rectangular redaction box covers the signature of Donal Maguire. The box is positioned below the text 'Yours sincerely,' and above the horizontal line.

Donal Maguire on behalf of the forestry Appeals Committee

