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19 May 2021

**Subject:** Appeal FAC 153/2019 in relation to licence CN83365

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Minister for Agriculture, Food and Marine in respect of licence CN83365.

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 the parties to the appeal.

#### **Background**

Licence CN83365 for afforestation of 36.51 hectares (ha) at Derrydoan Middle & Newpass Demense, Co. Westmeath was refused by the Department of Agriculture, Food and the Marine (DAFM) on 22<sup>nd</sup> May 2019.

#### **Hearing**

A hearing of appeal FAC 153/2019 was held by a division of the FAC on 8<sup>th</sup> February 2021. In attendance:

FAC Members: Mr. Myles Mac Donncadha (Chairperson), Mr. James Conway, Mr. Seamus Neely & Mr. Derek Daly

#### **Decision**

The Forestry Appeals Committee considered all of the documentation on the file, including application details, processing of the application by DAFM, the submitted grounds of appeal, and all other submissions received, before deciding to affirm the decision of the Minister to refuse this licence (Reference CN83365).

The licence decision pertains to the refusal of afforestation of 36.51ha at Derrydoan Middle and Newpass Demense, Co. Westmeath under GPC 8 & 10. The area comprises of two blocks of land in close proximity with one block (25.99ha in Newpass Demense) proposed to be afforested with Birch (85%) and Common Alder (15%), and the other block (10.52ha in Derrydoan Middle) with Birch (60%), Oak (15%), Alder (15%) and Additional Broadleaves (10%). Operational details were given as including mounding, ripping, drainage, slit planting, zero fertiliser and herbicides in years 0, 1, 2 & 3.

The site is located within the Upper Shannon WFD Catchment (26F), the Inny (Shannon)\_SC\_50 sub-catchment and the Black (Westmeath)\_020 river sub basin, which is drained by the Black river. This waterbody has a status of 'Moderate' recorded for the 2013 – 2018 assessment period and meets the Derrydoan Middle block at its south western end before following the perimeter of this block for approximately 600m. A head water of this river adjoins the south west boundary of the Newpass Demense block for approximately 200m, flowing in a south east direction, through a small lake and on to join the main section of this river and flow on to Lough Iron.

The application was desk and field assessed by DAFM and referred to Westmeath County Council, NPWS and An Taisce. Westmeath County Council responded on 29<sup>th</sup> March 2019 noting the site being immediately adjacent to Glen Lough NHA and Protected Structures within the County Development Plan,

that the site is within approximately 200m of Glen Lough SPA and the Competent Authority shall undertake an Appropriate Assessment Screening report to determine the likely impact on the proposal on the Natura 2000 network. It also made reference to water quality and that the development should be carried out in accordance with stated guidelines. An Taisce responded on 12<sup>th</sup> March 2019 listing their main concerns as;

- (i) Environmental Impact Assessment Report due to cumulative impact,
- (ii) Appropriate Assessment required for Glen Lough SPA (004045), and
- (iii) Water Quality, referring to the Black River's moderate quality and to nutrient release from afforestation operations in particular from peaty soils.

The Department of Culture, Heritage and the Gaeltacht in responding on 1<sup>st</sup> May 2019 observed that the proposal area is located close to Glen Lough SPA and pNHA site code 001687 and upstream of Lough Iron SPA and pNHA site code 000687 and expressed the view that the proposed afforestation has the potential to cause an adverse effect on;

- The conservation objectives of the SPAs and pNHAs
- Red listed ground nesting birds namely meadow pipit and Annex I hen harrier and kingfisher
- Protected mammal species and their breeding and nesting places.

and that the information submitted does not allay concerns in relation to a number of factors which they listed and that therefore it is not possible to adequately address the impact of the proposed development on the nearby Natura 2000 sites or to protected species and their breeding and nesting places. Accordingly they recommended, prior to making any decision, that the applicant be requested to provide an ecological Environmental Impact Statement and for DAFM to consider whether to request a Natura Impact Statement in regard to the nearby Natura 2000 sites to assist in the Appropriate Assessment process.

The proposal was also referred internally within DAFM for review by an archaeologist, who identified no Recorded Monument within the proposal area, but that a portion of the site lies within the well preserved historical demense of Newpass House. It outlined its findings from analysis of aerial photographs and recommended that a portion of the site be refused pending Archaeology Impact Assessment, and outlined other conditions such as unplanted buffer distances from certain features.

The DAFM recorded an Appropriate Assessment screening on 17<sup>th</sup> May 2019 identified one site, Glen Lough SPA, within 3km and screened that the project was incompatible with the Natura site, giving five reasons, and concluding that the project cannot proceed. The DAFM also recorded consideration of the environmental effects of the proposal across a range of criteria and determined that the application be subject to the EIA process with it added that the site was refused with sufficient grounds but if further detail was required an EIA would be required. The DAFM refused the application on 22<sup>nd</sup> May 2020 for the following reasons:

- Shell Marl,
- Environmental considerations,
- Landscape considerations,
- High water table,
- Multiple impacts on landscape and cultural amenity, nature conservation and European site (Glen Lough SPA). Cumulative impacts from future afforestation in addition to existing forest cover are too great for the area.

An accompanying letter from the DAFM Forestry Inspector issued with the standard DAFM decision letter and this outlined that the application was refused because it is likely to have a significant adverse impact on: a European site; nature conservation; an archaeological, historical, cultural site or feature; and water quality. It initially elaborated on these four reasons and then provided additional text under the following headings; EIA requirement, Appropriate Assessment Screening, Townland of Newpass Demense and Townland of Derrydoon Middle. It concluded by stating "for the above reasons and in taking on board the observations received from referral bodies and or the public, in summary this application is refused because it is likely to have a significant adverse impacts on nature conservation; water quality; cultural features; amenity use; and a European site."

There is one appeal against the decision. Broadly the grounds of the appeals submitted are as follows;  
*I am in receipt of your letter of 22.05.2019 and the bombshell that could destroy our lives.*

*30 years ago my Mother made finance available to purchase Newpass on almost 600 acres convinced that she was doing at least two good things.*

- 1) Ireland with the least tree cover in Europe needs many more trees*
- 2) As the Irish State made it very attractive with the tax free payments, she would help me with my pension needs, as the state pension of €243.30 would not be sufficient for me & my wife Iris.*

*In these thirty years we made sure that the farm was farmed organically. In Wicklow my son Marc is Irelands first qualified & certified organic vegetable grower & we were involved in many local improvements*

- a) Bring the Glen lake back (new weir)*
- b) Persuade Green Foods not to poison the lake with their waste water*
- c) Persuade Edgeworthstown not to ruin the wildlife in the Black river with all kinds of effluent and factory waste*
- d) Plant 90 acres of Ash & 25,000 of Oak to counteract the abundance of Sitka & Norway spruce.*
- e) Saving a local wood from the chain saw of a County Meath farmer.*
- f) This wood was later purchased by me. We generally protect the environment*
- g) Stop the OPW from dredging the Black river in July during nesting season (unbelievable)*

*Over the years we have met with Mr. Pdraig O'Donnell several times to discuss nature conservation regarding the Glenlough SPA. Among other things he wanted to swap some of our lake (approx 25% of Glenlough lake) for an established Sitka Spruce plantation nearby, we refused. He also explained that there was the possibility of us receiving compensation.*

*We find it strange that the 'State' has been recently replanting the northeast of Glen Lake, but we have been refused to do the same in the south east. There are several areas that could safely be planted.*

*Principally we are in favour of nature conservation and I am not surprised that your inspector has found many positive things, we have been caring for the Newpass environment for the last 30 years.*

#### *Conclusion*

*We need to find funds so that we can continue caring for the farm, maintain it well and insure it and have extra money to support my pension. This money can come from extra tree planting grants or compensation.*

*If we can agree on a fair and proper compensation we would be delighted to turn a half paradise into a 100% one. To get results we should work together.*

The DAFM statement to the FAC responded to the grounds of appeal stating that the licence application had been processed according to their procedures, SI 191 of 2017 and the Forestry Act 2014, and that all procedures/guidelines were adhered to. The DAFM Forestry Inspector submitted a statement directly responding to the appellants' contentions, a document entitled 'Expanding on the factors and thought processes taken into consideration regarding the refusal recommendation of afforestation proposal CN83365' and an appendix of photos (annex II).

The DAFM statement on the appeal addressed the grounds of appeal, commending the applicant's and his family's initiatives on protecting the environment, submitting agreeing that the Glen Lough district is a special place for habitats, wildlife and biodiversity worthy of protection and enhancement, that the decision was made on a fair and impartial basis, that other applications can have different circumstances and arise at different time periods, that section 32 of the Forestry Act concerns compensation for refusal of licences and that compensation does not apply where a decision to refuse an application is given for the reasons provided in subsection 6(a) and 7(a) and that those reasons are for the protection of the environment; ensuring good forestry practice; preservation of amenities; public health or safety; protection from flooding; preservation of water quality. It was submitted that one of the

reasons - *Multiple impacts on landscape and cultural amenity, nature conservation and European site (Glen Lough SPA). Cumulative impacts from future afforestation in addition to existing forest cover are too great for the area* – in the refusal letter was sufficient to refuse the afforestation licence without having to consider compensation and that the reasons issued with the formal refusal letter were considered detailed and sufficient, and that alone and in a less impacted area, the application may well have been acceptable.

The grounds of appeal focused on/outlined historical reasons for the applicant and his mother purchasing the land 30 years previous, that the farm has been farmed organically ever since and outlined some local improvement initiatives they were involved in from an environmental perspective and how additional funding was required to continue to care for the farm, maintain it well, insure it and have money for a pension. The grounds therefore did not specifically address the DAFM's stated reasons for refusing the application.

The FAC considered, 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. Neither afforestation nor deforestation (nor clear-felling) are referred to in Annex I. Annex II contains a class of project specified as "initial afforestation and deforestation for the purpose of conversion to another type of land use" (Class 1 (d) of Annex II). 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 DAFM recorded an assessment to determine EIA requirement with the inspector's comment on it included, the site refused with sufficient grounds but if required to look at it in greater detail then an EIA is required, citing multiple impacts such as water quality, landscape and cumulative effect.

The proposal was reviewed by a DAFM Archaeologist who recommended refusal of the proposal area in Newpass Demense pending an Archaeological Assessment. In a letter dated 30<sup>th</sup> April 2019, the DAFM notified the applicant of the Archaeologist's report and advised that it was necessary that the applicant provide an Archaeological Assessment for the consideration of DAFM and the National Monuments Service. There is no record of an Archaeological Assessment being submitted nor has any reference to archaeology being made in the grounds of appeal.

The FAC considered, under Article 6(3) of the Habitats Directive, any plan or project not directly connected with or necessary to the management of a European site, must be subject to an assessment of the likely significant effects the project may have on such a designated site, either individually or in combination with other plans projects, having regard to the conservation objectives of that designated site. In this case, the DAFM undertook a Stage 1 Appropriate Assessment screening, found one European site within 3km of the proposal, Glen Lough SPA and screened that the project incompatible with the Natura site, giving five reasons, briefly these were the loss of ex-situ foraging habitat, habitat fragmentation impacts, the disturbance of whooper swan from forestry activities, the degradation of the Natura site or its integrity, the cumulative impact of the afforestation project, and concluding that the project cannot proceed. The FAC consulted publicly available information from the NPWS and EPA and identified the same site within 3km of the proposal area and identified eight more within 15km; Garriskil Bog SAC, Ardagullion Bog SAC, Lough Owel SAC, Scragh Bog SAC, Lough Iron SPA, Garriskil Bog SPA, Lough Owel SPA, Lough Derravarragh SPA. The proposal area in Derrydoan Middle adjoins the Black (Westmeath)\_020 river waterbody and Glen Lough pNHA and is c. 240 meters from Glen Lough SPA. The proposal area in Newpass Demense adjoins a head water of the Black (Westmeath)\_020 river waterbody also which connects downstream with the section that previously adjoined the proposal area in Derrydoan Middle and this waterbody flows to Lough Iron, consequently both proposal areas are hydrologically connected with Lough Iron SPA. The qualifying interest of Glen Lough SPA is Whooper Swan, the qualifying interests of Lough Iron SPA is also the Whooper Swan along with other waterbirds and wetlands. The proposal areas are largely surrounded by forest or areas of high trees. Glen Lough

pNHA lies to the south west of the proposal areas with Glen Lough SPA adjoining and lying to the west of Glen Lough pNHA. The only open foraging area adjoining to north, east or west of Glen Lough pNHA and SAC is part of the proposal area in Derrydoon Middle, some grassland lies to south, south west of Glen Lough SAC.

An additional note included with application from the forester, outlining setbacks, no new openings to the Black River, all mature trees to be retained in plots 1 to 7, two walking bridges to be retained over the Black River, mound drains in plot 8 to have silt traps, wetter areas in plots 1 to 7 will be mounded while rest of plots' areas will be ripped. The proposal is for species of Birch (85%) and Common Alder (15%) in Newpass Demense and Birch (60%), Oak (15%), Alder (15%) and Additional Broadleaves (10%) in Derrydoon Middle. However, Westmeath County Council, An Taisce and Department of Culture, Heritage and the Gaeltacht in responses to referrals have all expressed caution, with An Taisce and Department of Culture, Heritage and the Gaeltacht raising particularly strong concerns which align with some of the reasons for refusal outlined in DAFM's refusal letter. The grounds of appeal focused largely on motivations and environmental record, which are noted. However, the grounds did not contain information that specifically addresses the reasons for DAFM's refusal in a manner than presents the FAC with information that indicates approval is warranted in this particular case.

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 series of errors was made in making the decision or that the decision was made without complying with fair procedure. The FAC is thus affirming the decision of the Minister regarding licence CN83365, that being to refuse the licence, in line with Article 14B of the Agricultural Appeals Act 2001, as amended.

Yours sincerely,

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

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Mr. James Conway (on behalf of the Forestry Appeals Committee)

