



[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

21 September 2021

Subject: Appeal FAC 092/2021 regarding licence CN88328

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 application CN88328 for afforestation of 2.63ha, in Lisnageeragh, Co Galway was refused by the Department of Agriculture, Food and the Marine (DAFM) on 22 April 2021.

Hearing

A hearing of appeal FAC 092/2021 of which all parties were notified, was held by a division of the FAC on 16 September 2021.

Presiding

FAC Members: Mr Des Johnson (Chairperson), Mr Luke Sweetman and Mr Seamus Neely

Decision

The Forestry Appeals Committee (FAC) considered all of the documentation on the file, including application details, processing of the application by DAFM, the grounds of appeal, and all other submissions, before deciding to vary the decision to refuse to grant this licence (Reference CN 88328).

This is a First Party appeal against a decision by the Minister to refuse to approve a licence in respect of a proposal for afforestation on a stated site area of 2.63ha at Lisnageeragh, Co. Galway. The proposal is for Native Woodland Establishment comprising Common Alder, Pedunculate Oak, Birch, and ADB. Deer fencing of 650m would be provided.

The DAFM referred the application to Galway County Council, the National Parks and Wildlife Service (NPWS), and An Taisce. There is no response from the County Council recorded. The response from An Taisce welcomes the proposal for the planting of broadleaves but there are concerns expressed as the site lies within the Lisnageeragh Bog and Ballinastack Turlough SAC. Appropriate Assessment is required for Lisnageeragh Bog and Ballinastack Turlough SAC, an important conservation area under

the EU Habitats Directive. The SAC is a large composite site which contains good examples of priority Annex I habitats – Active Raised Bog and Turlough. The quality of the Raised Bog in Lisnageeragh Bog is generally good despite a long history of drainage and peat cutting. The Turlough area is smaller but unusual as it lies adjacent to a raised bog. The transition between the two ecosystems is extremely rare and of high ecological value. The Turlough attracts wintering waterfowl, 3 species of which are listed on Annex I of the EU Birds Directive – Greenland White-fronted Goose, Whooper Swan and Golden Plover. The Lisnageeragh Bog also supports a population of Red Grouse, a Red-listed species. It must be ensured that the proposed afforestation does not negatively impact on the quality of the Springfield_010 which runs along the plot and is classified as being of ‘Good’ status. The NPWS response includes nature conservation recommendations. The Lisnageeragh Bog and Ballinastack Turlough SAC has qualifying interests of active Raised Bog and Degraded Raised Bog still capable of regeneration, among others. Maintenance of groundwater, surface water flows and water table levels within natural ranges are essential to protecting these wetland habitats. There is concern that a change in habitat to forestry has the potential to cause a significant negative impact on the habitats through the introduction of new drains and alteration of existing ground and surface water flow, in addition to the higher demand for water from trees. Consideration should be given to the appropriateness of afforestation on this site. Areas of Lisnageeragh Bog are subject to a current NPWS peatlands restoration plan which includes, where required, drain blocking on the high bog and some adjacent lands. Any permitted afforestation and associated drainage should not be detrimental to the objectives of the restoration plan. Screening for Appropriate Assessment is required. If any afforestation is to occur, the Code of Best Forest Practice for Ireland should be followed. All requirements under the EC (Birds and Habitats) Regulations 2011 should be observed. The submission encloses an appendix of General Comments.

The Inspector’s Certification states that the site is not suitable for 15% broadleaf afforestation. The project lands are not prone to flooding, are free from shell marl or highly calcareous soils, and are not acid sensitive or sensitive to fisheries. There are no Freshwater Pearl Mussel issues, the lands are not in a Prime Scenic Area as per the County Development Plan and there are no high amenity considerations. The site is within a European designated site and contains an archaeological site or feature. Ground preparation would consist of woody weed removal, with ripping and pit planting. No fertilisation is proposed, and drainage is not required. Herbicide control is proposed in year 0. Road access is provided. Soils are predominantly blanket bog, and the slope is predominantly flat to moderate. The project area is crossed by/adjoins an aquatic zone. Sixteen Natura 2000 sites are identified, and the screening conclusion is ‘Hold’.

There is an Inspector’s note on file dated 10.03.2021. This records observation made at the time of a field inspection as follows:

Very poor site, very shallow poor brown peat surface over a mineral subsoil, grey and wet. Vegetation with high proportion of sharp flowered rush and sedge, eriophorum, some Molinia and DBS. A strip of better land along the northern boundary with good land, with soft rush, but not wide enough to justify planting. Area will not grow trees to an acceptable level without cultivation, drainage and fertiliser, and majority unsuitable land/GPC1. Possibly Annex I habitat, Molinia meadows and possibly habitat for MF butterfly, which will require ecology input and summer surveys. Stream along the southern

boundary. All in SAC. Await response from NPWS but refusal to be considered. (Photographs stated to have been taken at the date of inspection are on file).

An Appropriate Assessment screening, dated 22.04.2021, identifies Natura 2000 sites within a 15km radius of the project lands. It records that there is "not sufficient information with the application and available to form a sound judgement". EIA screening records that the approximate percentage forest cover in the townland is 5.57%, within 5km is 5.57%, and in the underlying waterbody is 1.76%. Other information is as contained in the Inspector's Certification.

A refusal of the application for the afforestation licence issued on 22.04.2021. The reasons given for the refusal are as follows:

- Environmental considerations
- In SAC and pNHA. Proposed tree planting not supported by NPWS.

It is stated that the refusal is to ensure good forest practice, the protection of the environment, health and public safety.

There is a first party appeal against the decision to refuse the licence. The grounds of appeal contend that there would be no mound drains or other new drains installed. No application of fertiliser is proposed. There would be no mounding operations. A buffer zone of 20m is proposed adjoining the Aquatic Buffer Zone with 20% setback planting as per Forestry Guidelines. The NPWS referral response does not state that it does not support tree planting. The NPWS informed local TD, Deputy Michael Fitzmaurice, that they do not object to tree planting for this application. The submission encloses a copy of the refusal letter and copy of the NPWS correspondence. There is a supporting letter from Michael Fitzmaurice TD, dated 24.08.2021. This states that during conversations with the NPWS, it was made clear that the NPWS did not object to planting but requested a Natura Impact Statement (NIS) be carried out. The NPWS focus is on land south of the watercourse that acts as a boundary for the proposed plantation. The bog would be approximately 200-300m away from the watercourse. Moving away from the watercourse, the soils change completely.

In response, the DAFM state that the site was field assessed on 09.03.2021 and field notes taken. The majority of the site as submitted is Unenclosed Land. Unenclosed Land cannot exceed 20% of the total area under the NWS Establishment-Silvicultural Standards, September 2015. Having considered the application, the Inspector concluded that it is not possible to adequately establish broadleaves on this site to free growing stage as per the Forestry Standards Manual, without drainage, cultivation and fertiliser, and these operations are inconsistent with the Native Woodland Establishment Scheme. The majority of the site is in excess of 70% GPC1 and does not meet the requirements of the NWS. The response from the NPWS does not meet the requirement for approval specified for Designated Habitats on iFORIS certification screen. Afforestation cannot be recommended without explicit approval from NPWS.

A hearing of the appeal was convened on 16 September 2021. In the first instance, the FAC noted that this is a roughly rectangular shaped site with a stream (Curraghmulmurry Stream) flowing along its southern boundary in a north westerly direction. The project lands are within the Lisnageeragh Bog

and Ballinastack Turlough SAC. There are 16 Natura 2000 sites within a 15km radius of the site. The application documents do not include a NIS and there is no Appropriate Assessment screening carried out by DAFM on the file. The Site Notice for the application is dated 16.02.2021 and the application appears to have been registered on 23.02.2021. The Inspector carried out a site inspection on 09.03.2021 and prepared a detailed inspection note on the 10.03.2021; photographs taken at the time of inspection are on file. The decision to refuse the application for a licence issued on 22.04.2021, following the submission of referral responses by An Taisce and NPWS.

The grounds of appeal contend that the proposed development would not include the installation of mound drains or any other new drains on the site, and no fertiliser is proposed. The Inspector's site inspection notes, following observations recorded on ground conditions, soil type and vegetation cover, contends that the area will not grow trees to an acceptable level without cultivation, drainage and fertiliser, as the majority of the land is unsuitable. There is no convincing information before the FAC to indicate that the Inspector's observations and conclusions made and reached at the time of the site inspection are incorrect in detail. The FAC considered if the conditions observed would be suitable for Native Woodland Establishment without the need for cultivation, drainage and the application of fertiliser, and concluded that they would not be suitable conditions for such afforestation.

The Minister's decision to refuse approval for the licence cites environmental considerations as a reason. Having regard to the information before it in respect of the characteristics of the project lands, and to the fact that they are within the Lisnageeragh Bog and Ballinastack Turlough SAC (and Lisnageeragh Bog and Ballinastack Turlough pNHA), and there is no assessment of the potential for adverse impacts arising on this designated site or on other Natura 2000 sites within a 15km radius (16 designated sites in total), the FAC found no reason to conclude that the Minister had made a significant or serious error in deciding to refuse approval of the licence for reason of environmental considerations.

The appellant contends that, in its referral response, the NPWS does not state that it does not support the proposed tree planting. The appellant's contention is supported by a submission by Michael Fitzmaurice, TD, made following discussions with the NPWS. The NPWS response states concern that a change of habitat to forestry has the potential to cause a significant negative impact on the habitats of the Lisnageeragh Bog and Ballinastack Turlough SAC through the introduction of new drains and alteration of existing ground and surface water flow, in addition to the higher demand for water from trees. It also states that consideration should be given to the appropriateness of afforestation on this site. In its response to the grounds of appeal, the DAFM states that the response from the NPWS does not meet the requirement for approval specified for Designated Habitats on iFORIS certification screen, and afforestation cannot be recommended without explicit approval from NPWS. Based on the information before it, the FAC concluded that the NPWS submission raises concerns, but does not specifically state that the proposed tree planting is not supported by NPWS, and this is a significant error in the stated reasoning for the decision to refuse approval of the licence.

It is clear from the information on the file that there is inadequate information to enable compliance with the provisions of Article 6(3) of the Habitats Directive. There is no NIS submitted with the application and no screening of the 16 Natura 2000 sites within a 15km radius of the project lands.

The FAC concluded that, in these circumstances, the licence could not, in any event, be approved in compliance with the provisions of the Habitats Directive.

While concluding that the Minister made a significant error in the reasoning of the decision to refuse approval for the licence by stating that proposed tree planting is not supported by the NPWS, the FAC concluded that the decision to refuse the licence for the other reasons stated was correct. The FAC concluded that the decision to refuse approval should be varied by the removal of the reason stating, "proposed tree planting not supported by NPWS".

Yours sincerely

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

Des Johnson, on behalf of the Forestry Appeals Committee

