



27th January 2022.

Subject: Appeal FAC 140/2021 regarding licence CN88594

Dear

I refer to an 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 as amended, has now completed an examination of the facts and evidence provided by all parties to the appeal.

Background

Licence CN88594 is for the afforestation of 3.54 hectares at Kildurrihy East, Ventry, County Kerry which was approved by the Department of Agriculture, Food and the Marine (DAFM) on the 1st November 2021 subject to conditions.

Hearing

A hearing of appeal FAC 140/2021 was held by a division of the FAC on the 17th January 2022. The FAC members in attendance at the hearing were Mr. Myles Mac Donncadha (Chairperson), Mr. Iain Douglas and Mr Derek Daly.

Decision

Having regard to the evidence before it, including the record of the decision by the DAFM, the notice of appeal, and all other submissions received, and, in particular, the following considerations, the FAC has decided to affirm the decision of the Minister regarding licence CN88594.

Licence

The licence pertains to the afforestation of 3.54 hectares at Kildurrihy East, Ventry, County Kerry. The site is referred to having two plots, plot 1 which adjoins the public road has a stated area 2.45 hectares in which is GPC 3 planting is proposed with a mix of Alder (0.37 hectares) and Sitka Spruce (2.09 hectares) and a second plot of 1.09 hectares which is proposed GPC 9 planting with a mix of Sessile Oak (0.33 hectares), Scots Pine (0.33 hectares), Birch (0.16) and Hybrid Larch (0.27 hectares). In the course of the DAFM assessment of the licence the applicant was requested to change this plot from plot from pure Alder to a more diverse mix. The application was accompanied by mapping including location maps, biodiversity/operational map, fencing map and public notices.

The site is within the Ballinleague_010 River Waterbody WFD for which the EPA records the status as unassigned and in terms of risk is indicated as review.

The inspector certification refers to project comprising 3.54 hectares of afforestation. The predominant soil type underlining the project area is predominantly podzolic in nature. The slope is predominantly flat to moderate (<15%). The project area is crossed by / adjoins an aquatic zone(s). The vegetation type(s) within the project area is wet grassland.

The licence application was referred to Kerry County Council with no response received. The application was also referred to the National Parks and Wildlife Service with no response received. The application was referred to An Taisce who in a response dated 13th May 2021 refer to *"High Nature Value Farming and the need to protect farming systems in Europe of greatest biodiversity value or 'High Nature Value (HNV) farming' has been embraced at an EU level and that it is recognised that the conservation of HNV farming is essential if the EU is to meet its 2020 biodiversity targets and based on our observation we believe that there is a high probability that the site in question supports habitats and/or species which would qualify this area as High Nature Value farmland"*. An Taisce in the response calls on the Forestry Service to ensure that an Ecological Assessment is carried out to ensure that afforestation does not take place in contravention of EU regulation No 807/2014.

There was also a submission from the appellant referring to the site's location as situated at the foot of mount Eagle looking out over Ventry Bay with Mount Brandon. It stated the site is in an area of outstanding natural beauty and one of the major tourist spots in the country. There is already sufficient forestry granted in the area exceeding the 20% limit (20% rule). Further afforestation will have a dramatic negative impact on the environment. These spruce plantations are environmental dead zones. No biodiversity. The land is not marginal land and in fact could very easily be used for other farming activity as this particular site has been for 100's of years. This land has high agricultural quality and contains high nature value (HNV) and pockets of rich biodiversity and that any further forestry in the area is not in keeping with the visually acceptable landscape. Reference is also made to the capacity of the road network and impact on mental health of residents in the area.

The DAFM Inspector recorded a screening for Appropriate Assessment in which four European sites are recorded within 15 kilometres of the project area all of which were screened out. The sites identified were Blasket Islands SAC 002172 which was screened out as the location of the project area within a separate water body catchment to that containing the Natura site, with no upstream connection, and the subsequent lack of any hydrological connection; Blasket Islands SPA 004008, Dingle Peninsula SPA 004153 and Mount Brandon SAC 000375 all of which were screened out due to the unsuitability of the project area for use by any species listed as a qualifying interest of the Natura site. The overall conclusion of the screening for Appropriate Assessment was to Screen Out with no likelihood of a significant effect on any European site, and Appropriate Assessment was not required.

An In Combination report dated the 28th September 2021 concludes that this project, when considered in combination with other plans and projects, will not give rise to the possibility of an effect on the Natura sites.

Appeal

There is one appeal against the decision to grant the licence.

The grounds of appeal refer to;

- The area has excessive forestry.
- Reference is made to the inadequate nature of the road network.
- Setback from road should be 20 metres.
- Proposed forestry is within 60 metres of housing.
- Reference is made to amenity zoning for the area.

In a statement to the FAC, the DAFM indicated that the decision was issued in accordance with their procedures, S.I. 191/2017 and the 2014 Forestry Act. The licence application was desk and field assessed. The Statement from Inspectorate indicates that;

- This project lies in a rural landscape in Kildurrihy East, Kerry in the River Sub-Basin Ballinleague_010. The River Sub-Basin Ballinleague_010 has approximately 4% forest cover, which is lower than the national average of 11%. At 3.54 hectares the project is considered lower in scale.
- The licence is for afforestation and a forest road entrance can be applied for within 5 years of harvest.
- Reference is made to the conditions of the licence with an unplanted public road setback of a minimum width of 10 metres (as measured from the surfaced edge of the public road) and accompanied by a 10 metre wide strip of broadleaves, shall be installed in all conifer plots adjoining a public road.
- 60 metres setback from dwellings will be adhered to.
- The site is flat and not identified was within a designation of sensitivity.

Assessment of Appeal.

In addressing the grounds of appeal, the FAC considered the requirements of the Habitats and EIA Directives, the completeness of the assessment of the licence application, whether there was an adequate assessment of cumulative effects and an examination of the procedures applied which led to the decision to grant the licence.

The FAC considered if the procedures leading to the making of the decision to grant the licence for the proposed development were consistent with the EIA Directives. Regarding Environmental Impact Assessment (EIA) and related matters, 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. The Irish Regulations, in relation to forestry licence applications, require mandatory EIA 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 proposal as described is for the afforestation of 3.54 hectares and is sub-threshold for the mandatory submission of an EIA report. In this case the FAC found that the DAFM assessed the proposal and considered the application across a range of criteria, including water, designated areas, landscape and cumulative effects, and determined that the project was not required to undergo the EIA process.

In considering the appeal the FAC examined the Appropriate Assessment Screening undertaken by the DAFM as it related to the afforestation of 3.54 hectares. Having examined the documentation submitted, the FAC identified the same four Natura sites as the DAFM within 15km from the proposal and the FAC is satisfied that there was no need to extend the radius in this case. The FAC considered the nature, scale and location of the proposal, the European sites identified, and their conservation objectives and the reasons provided by the DAFM for screening them out. The DAFM considered each site in turn and provided the reasons for screening all the sites out for Appropriate Assessment. Details of other plans and projects were also examined. The proposed works are located outside of any European site, the project site was the subject of a field inspection and there is no evidence of a pathway of effects to a European site. Neither is there evidence of protected habitats or species on the site. The FAC is therefore satisfied, having regard to the record of the decision, that no serious or significant error was made in the decision regarding Appropriate Assessment screening.

In relation to potential hydrological impacts on Natura 2000 sites and on water quality generally the FAC notes that in relation to WFD the project is within the Ballinleague CAMLIN_10 River Waterbody WFD, the status of which is unassigned and in terms of risk is indicated as review. The FAC has examined this issue and from an assessment of the topography of the site and the pattern of contours and slopes; mapping and aerial imagery of the area; the short distance to the sea; the location and nature of watercourses in the area which indicates a historic watercourse in plot 2 and that the proposal is to provide for GPC 9 planting in plot 2 in the proximity of the nearest watercourse identified. The FAC, having examined the matter, concluded that the proposed afforestation will have no impact on any receiving waters based on the nature of afforestation proposed and approved in the conditions of the licence.

In relation to the stated grounds of appeal and the impact on the landscape which is considered visually sensitive, that the area already has considerable levels of forestry which could be considered excessive and that the biodiversity of the area will be adversely impacted upon. This matter was also raised in the An Taisce submission to the DAFM. The FAC has noted the response of DAFM in relation to the current scale of forestry in the area as below the national average and also an examination of current Kerry County Development Plan designations do not identify the site as having an amenity/scenic landscape designation. The FAC also noted that plot 2 of the application was on the request of DAFM initial assessment altered from GPC 8 to GPC 9 and this alteration is specifically referred to in the conditions attached to the licence which will provide for increased biodiversity and reduced visual impact.

In relation to setback from the public road referred to in the grounds of appeal it is noted by the FAC that the condition of the licence as issued on the 1st November 2021 provides for an unplanted public road setback of a minimum width of 10 metres (as measured from the surfaced edge of the public road) and accompanied by a 10 metre wide strip of broadleaves, to be installed in all conifer plots adjoining a public road, in accordance with Tables 5 and 6 of the Environmental Requirements for Afforestation.

In relation to the road network and the capacity of the road network to accommodate the proposal the FAC examined the documentation submitted in relation this issue. Having considered these issues the FAC would note in terms of traffic generated the project will not generate constant use but will be intermittent in nature confined largely to periods of thinning and felling and therefore will not significantly impact traffic flows. In relation to separation distance from dwellings there is specific requirements in the Forestry Guidelines in relation to minimum distance for planting from the dwellings and the conditions as stated require compliance with these guidelines.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal and other submissions received. The FAC is satisfied that no significant errors was made in making the decision at the assessment stages or that the decision was made without regard to fair procedures. The FAC is affirming the decision of the Minister regarding licence CN88594 in line with Article 14B of the Agricultural Appeals Act 2001. In affirming the decision, the FAC considered that the proposal as licenced is in keeping with Good Forestry Practice and Government Policy.

Yours sincerely,

Derek Daly On Behalf of the Forestry Appeals Committee

