



22nd July 2022.

Subject: Appeal FAC 002/2022 regarding licence CN86359

Dear

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

Background

Licence CN86359 is for the afforestation of 11.38 hectares at Meenmore, County Sligo which was granted by the Department of Agriculture, Food and the Marine (DAFM) on the 14th January 2022.

In relation to this appeal there was a previous decision by the FAC issued on the 23rd September 2021 Appeals ref nos. FAC 040 and 041/2021 regarding licence CN86359. The decision of the FAC was *"The FAC is satisfied that a serious or significant error or a series of errors were made in making the decision in relation to licence CN86359. The FAC is therefore setting aside and remitting the decision regarding licence CN86359 to the Minister to carry out and record a new assessment to determine whether the application should be subject to the EIA process under the EU EIA Directive, before a new decision is made."*

The current licence application / appeal is in effect to address the previous decision.

Hearing

A hearing of appeal FAC 002/2022 was held by a division of the FAC on the 27th April 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 vary the decision of the Minister regarding licence CN86359.

Licence

The licence pertains to the afforestation of 11.38 hectares at Meenmore, County Sligo. The site has seven plots which are contiguous with some plots separated by local roads. The land is described in the

Appropriate Screening documentation contained in the Inspectors Certification on file as having soils which are predominantly podzolic in nature. The slope is said to be flat to moderate and is crossed by / adjoins an aquatic zone(s) with the vegetation type(s) within the project area comprising grass/rush. Sitka Spruce is the main species proposed (85%) with the remainder being broadleaf planting. The application was accompanied by mapping including location and species maps.

The site is within the within the River Sub-Basin LISREAGH_SC_010 River Waterbody WFD, for which the EPA records the status as good and in terms of risk is indicated as being at risk with forestry identified as the pressure category.

The application was referred to the Inland Fisheries Ireland (IFI) and Sligo County Council both of which outlined measures to protect water quality and important fisheries in the area with buffer planting recommended adjoining waterbodies.

Submissions were also received from other parties including a number of local residents, referring to impacts to their properties and dwellings and impacts on landscape/visual impact, archaeology, the precedence of leaving areas unplanted, protected species (bats) and the precedence of edge planting.

DAFM Assessment

DAFM documentation indicates that the licence was desk and field assessed. The licence was also the subject of referral to the DAFM archaeologist and the DAFM ecologist. DAFM carried out an Appropriate Assessment Screening Determination (AAS) identifying thirteen European sites within 15 kilometres and two of these sites were screened in. The AAS considered the effect the proposal may have, by way of hydrological connection, to Templehouse And Cloonacleigha Loughs SAC 000636 and Unshin River SAC 001898 and their respective qualifying interests. Having assessed these sites mitigation measures were identified. The Appropriate Assessment Determination (AAD) concluded that the project site is not within a European Site and the mitigations (and avoidance) measures outlined would prevent any adverse effects on the qualifying interests of the Templehouse And Cloonacleigha Loughs SAC and the Unshin River SAC.

The DAFM assessment, in addition to the AAS and AAD includes an initial assessment from the District Inspector that records a screening for AA and subsequent certifications. In the initial screening, thirteen European sites are recorded within 15 kilometres of the project area Bricklieve Mountains and Keishcorran SAC 001656, Callow Bog SAC 000595, Cloonakillina Lough SAC 001899, Cloonshanville Bog SAC, Doocastle Turlough SAC, Flughany Bog SAC 000497, Lough Arrow SAC 001673, Lough Arrow SPA 004050, Lough Gara SPA 004048, River Moy SAC 002298, Templehouse And Cloonacleigha Loughs SAC 000636, Tullaghanrock Bog SAC 002354 and Unshin River SAC 001898 all of which were screened out and the reasons stated are on file. The DAFM has determined that there is no likelihood of the project having any significant effect, either individually or in combination with other plans and projects, on these European sites.

An In-combination report completed on the 9th November 2021 concluded, following the initial screening determination that the project will not have a significant effect, either individually or in combination with other plans and projects on the European Site(s) listed.

The licence was also assessed by an ecological report in relation to additional protected species in particular the bat species and the Freshwater White-clawed Crayfish species.

The decision of DAFM was to grant permission for the project subject to conditions on the 14th January 2022.

Appeal

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

The grounds of appeal refer to in summary;

- Refers to an administrative error or mistake in the decision regarding archaeology, with no reference to previous recommendations of the DAFM Archaeologist in a previous assessment of the project.
- Five main issues were raised as previously; landscape/visual impact, archaeology, precedence leaving areas unplanted, protected species (bats) and precedence edge planting.
- A copy of a consultant report prepared for appellant was submitted with the grounds of appeal.

In their Statement of Facts (SoF) 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 SoF includes a response from the ecologist which specifically refers to the issue of bat species and indicates no objection to the decision being varied to provide for the provision of a bat emergence / re-entry survey (and any further subsequent requirements) prior to any works being undertaken to ensure compliance with current legislative requirements and that the surveys to be carried out by a suitably qualified and experienced bat ecologist.

The Statement from Inspectorate refers to and indicates that planting will be set back 60 metres from dwellings as required by Section 6 of the Forestry Schemes Manual; all setbacks required under scheme rules to be installed; archaeology was addressed by the Forest Service Archaeologist; bat survey has been addressed by the Forest Service ecologist and 10 rows of broadleaf will be planted along dwelling and public road setback at 2x2m spacing as per GPC3 category rules under DAFM afforestation scheme. It is also stated that the forest cover in the underlying waterbody as recorded by IFORIS is the same as that recorded in the in combination text loaded to the electronic 'Contacts' record.

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 which led to the decision to grant the licence.

As previously indicated the current decision under appeal addresses a previous decision of the FAC ref nos. FAC 040 and 041/2021 setting aside and remitting the decision regarding licence CN86359 requiring the Minister to carry out and record a new assessment to determine whether the application should be subject to the EIA process under the EU EIA Directive, before a new decision is made.

The basis of the previous decision was the absence of a documented reconciliation of the apparent differences in the forest cover percentages in the submitted documentation which formed the assessment to determine EIA Requirement. The current proposal has addressed these differences.

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 project types 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 11.38 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 process as undertaken by the DAFM as it related to the project. Having examined the documentation submitted, the FAC noted that the initial assessment identified thirteen sites within a 15 kilometre radius of the site. The FAC has identified the same thirteen Natura sites as the DAFM within 15 kilometres 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 in the AAR and AAD process. 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 FAC noted that the DAFM recorded, in its Assessment to Determine EIA Requirement, a consideration of the application across a range of criteria relevant to the development proposed, including water, soil, terrain, slope, designated areas, landscape and cumulative effects, and determined that the project was not required to undergo EIA. The FAC is satisfied that the range and type of criteria considered is appropriate for DAFM to determine whether an EIA report was required having regard to the nature, scale and location of the proposal.

In relation to potential hydrological impacts on Natura 2000 sites and on water quality generally the FAC notes that the project is within the River Sub-Basin LISREAGH_SC_010 River Waterbody, for which the EPA records the status as good and in terms of risk is indicated as being at risk with forestry identified as the pressure category. 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 location and nature of watercourse adjoining the site and the area generally and considers that DAFM did not err in its assessment and included requirements to provide for the protection of water quality. The FAC noted the requirement to provide for buffers along waterbodies and the planting of broadleaves along these boundaries. Which follow forestry guidance and guidance and recommendations as stated in submissions by Inland Fisheries Ireland (IFI) and Sligo County Council both of which outlined measures to protect water quality and important fisheries in the area with buffer planting recommended adjoining waterbodies. The FAC, having examined the matter, concluded that the proposed afforestation will not impact on the quality on any receiving waters.

In relation to other matters and specifically the matters raised in the grounds of appeal reference is made to a possible administrative error or mistake in the decision centring around archaeology with no reference to previous recommendations of the DAFM Archaeologist in a previous assessment of the project. It is noted that the previous decision made on this licence did refer to adherence to the recommendation of the Forest Service (FS) Archaeologist who had reported and made recommendations in relation to the site, and the SoF in the current appeal does also refer to the matter as addressed by the Forest Service Archaeologist. It would appear, however, that in issuing the licence the requirements in relation to archaeology included in the previous decision were not included in the current licence decision. This constitutes an error or an oversight by DAFM and that it appears that it was the intention of DAFM to include this requirement. The FAC is satisfied that this can be addressed by a variation of the decision to include the addition of the requirement for the implementation of the recommendations of the FS archaeologist.

The FAC noted submissions by third parties in relation to proximity of the development to their dwellings and the provision of separation areas. In relation to landscape and visual impact it is accepted that the planting of an area with forestry does alter the landscape but it is a national policy to promote forestry. The FAC notes that good forestry practice and guidelines requires minimum setbacks from dwellings, public roads and watercourses where a licence is approved. The FAC noted the location of dwellings in the immediate area of the proposal and is satisfied that subject to compliance with these Guidelines, the setback distance will ameliorate adverse impacts. The FAC does not consider that the DAFM has erred in this regard and also notes that the requirements of IFI and Sligo County Council were largely taken on board in the assessment of the licence.

In relation to the bat species a condition of the licence refers to *"bat boxes have been confirmed within the Zone of Influence. Apply a minimum 5m set back between any occupied bat box and the works zone.*

Darkened flight paths are to be maintained along commuting corridors at all times". It is also noted that DAFM in their response to the grounds of appeal includes a response from the ecologist which specifically refers to the issue of bat species and indicates no objection to the decision being varied to provide for the provision of a bat emergence / re-entry survey (and any further subsequent requirements) prior to any works being undertaken to ensure compliance with current legislative requirements and that the surveys are to be carried out by a suitably qualified and experienced bat ecologist. The FAC considers that this additional requirement should be included as a variation to a licence.

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 not satisfied that a serious or significant error or series of errors was made in the making of the decision or that the decision was made without complying with fair procedure.

For the reasons as outlined the FAC is thus varying the decision of the Minister regarding licence CN86359 in accordance with Section 14B of the Agricultural Appeals Act 2001 (as amended) to include the following condition that *"the applicant shall comply with the requirements and recommendations as set out in the report of the Forest Service Archaeologist"* and in relation to the condition on bat species *"bat boxes have been confirmed within the Zone of Influence. Apply a minimum 5m set back between any occupied bat box and the works zone. Darkened flight paths are to be maintained along commuting corridors at all times"* that it be varied to include the addition of the following requirement *"to provide for the provision of a bat emergence / re-entry survey (and any further subsequent requirements) prior to any works being undertaken to ensure compliance with current legislative requirements and that the surveys to be carried out by a suitably qualified and experienced bat ecologist"*.

In deciding to vary the decision, the FAC considered that the proposed development would be consistent with Government policy and good forestry practice.

Yours sincerely,

Derek Daly On Behalf of the Forestry Appeals Committee