



9th March 2022

Subject: Appeal FAC 137/2021 regarding licence CN88453

Dear

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 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 2.86 hectares at Corrachomera, Corlough, Belturbet, County Cavan which was approved by the Department of Agriculture, Food and the Marine (DAFM) on the 2nd November 2021 subject to conditions.

Hearing

A hearing of appeal FAC 137/2021 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 CN88453.

Licence

The licence pertains to the afforestation of 2.86 hectares at Corrachomera, Corlough, Belturbet, County Cavan. The site comprises 3 adjacent relatively narrow plots (maximum width no more than c. 100m) where an integrated mix of Birch (85%), Rowan (10%) and Common alder (5%) is proposed. The application was accompanied by mapping including location maps, biodiversity/operational map, fencing map and public notices.

The site is located in Catchment 36 Erne (District Code: GBN11ENW), WFD Sub-Catchment (36_6) Blackwater (Newtowngore)_SC_10. The status of the stream to the southwest of the project area and flowing in a SE direction is classified as moderate under Waterbody Status IE_NW_36B040200.

The inspector's certification refers to the soil type underlying the project area as predominantly podzolic in nature and that the site is flat to moderate in slope (<15%). The existing vegetation types within the project area includes improved grassland, wet grassland and hedgerows.

The licence application was referred to Inland Fisheries Ireland, from whom there is no reply on record. The application was also referred to the National Parks and Wildlife Service (NPWS) with response received, referencing a site inspection of the lands involved. The correspondence describes concerns, amongst other aspects, for heath habitat along the aquatic zone, disturbance or loss of foraging habitat for Hen Harrier and prey species such as Meadow pipit, lowland waders such as Snipe, passerines and other species protected under the Wildlife Acts (as amended) within the application site. They consider that an assessment is required for both possible negative and cumulative impacts on Hen Harrier and that in the absence of such an assessment it remains uncertain whether the species occurs within or close proximity to the application site. Some of the DAFM documentation refers to a referral to Cavan County Council but this was deemed unnecessary by the DAFM Inspector and it did not take place. Five submissions were received.

The DAFM Inspector recorded a screening for Appropriate Assessment in which two European sites are recorded within 15 kilometres of the project area and both were screened as specified in *Appropriate Assessment Procedure: Guidance Note & iFORIS SOP for DAFM Forestry Inspectors* (v.05Nov19) (DAFM, 2019). The District Inspector's recommendations that both sites could be screened out were subjected to expert verification by a Forest Service ecologist who added two further Natura 2000 sites (located in Northern Ireland) for consideration. These sites were also screened out for Appropriate Assessment in accordance with S.I.477 of 2011 (as amended) and S.I.191 of 2017 (as amended) citing that the project is not directly connected with or necessary to the management of any European Site. Furthermore, DAFM determined that there is no likelihood of the project having any significant effect, either individually or in combination with other plans and projects, on this European site. The determination was based in part on a site investigation carried out by a Forest Service ecologist on the 14th October 2021 with information pertaining to this site visit recorded within a separate ecology report (dated 28th October 2021).

An 'In Combination report' dated the 19th October 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. An approval for the proposal issued on 2nd November 2021 listing additional conditions as a) the afforestation project and all associated operations shall be carried out and completed in accordance with the measures set out in the Environmental Requirements for Afforestation and the Forestry Standards Manual (as amended by periodic Circulars) (in the interest of clarity and to ensure good forest practice and the protection of the environment); b) All existing trees and hedgerows within the site shall be retained (in the interests of protecting the character of the landscape and the protection of the environment, in particular, habitats for flora and fauna); and c) adhere to all conditions noted in attached Ecology Report.

Appeal

There is one appeal against the decision to grant the licence. The grounds of appeal refer to adverse impacts on wildlife and a water spring in addition to the proposal being too close to the appellant's house. 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 acknowledges all 5 submissions received and upholds the original decision reiterating the additional conditions, and also indicating the following ;

- The proposed afforestation area has been walked by both the Forest Service District Inspector and Forest Service Ecologist. No protected habitats or species were noted (see Ecology Report). The conditions attached to the Afforestation Approval will protect water quality and biodiversity of the area. The change of land use from agriculture to broadleaved woodland is more likely to improve the wildlife value by replacing agricultural activities of slurry/fertiliser application, topping rushes, broad herbicide application with a broadleaved woodland which is less reliant on fertilisers and intensive management.
- No spring well was noted by either the District Inspector or the Ecologist. No spring wells have been found on the OS maps for the area. If a well is located within or adjacent to the proposed afforestation area a 20m set-back will be established (see Table 5 in Environmental Requirements for Afforestation)
- No trees will be planted within 60m of any dwellings (see Table 5 in Environmental Requirements for Afforestation).

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 2.86 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. Having examined the documentation submitted, the FAC identified the same four Natura 2000 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 Natura 2000 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 Natura 2000 site, the project site was the subject of a field inspection and there is no evidence of a pathway of effects to a Natura 2000 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 the stated grounds of appeal and the impact on wildlife the FAC is satisfied that the proposal was subject of site inspection by the District Inspector and by the Forest Service Ecologist; that all topics to which their attention was drawn by the submissions, appellant and NPWS were considered; and that the potential impact of the planned afforestation of alder, birch and rowan was fully addressed in the ecologist's report and subsequent decision.

In relation to the impact on a water spring there would appear that none could be found during either of the field inspections but that a 20m setback would be imposed if detected. In relation to an impact on dwellings the normal 60m setback will apply from the nearest tree planting of what are to be slow growing trees which will have no leaves in winter.

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 were 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 CN88453 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,

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Myles Mac Donncadha On Behalf of the Forestry Appeals Committee