



15th November 2022

Subject: Appeal FAC 007/2022 relating to Licence CN88460

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 14A (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.

Decision

Having regard to the evidence before it, including the full Department of Agriculture, Food and the Marine (DAFM) record of the decision, the notice and grounds of appeal and a Statement of Fact (SoF) provided by the DAFM, all materials on file, and in particular the following considerations, the FAC has decided to affirm the decision of the Minister regarding licence CN88460.

Licence

Licence CN88460 is for 20.81 Ha. of GPC 6 afforestation in the townlands of Trean & Aghamore, Co. Leitrim and was submitted to the DAFM on the 17th of May 2021. On the 20th of January 2022 the DAFM issued a notice granting the licence with conditions including the retention of all existing trees and hedgerows on the site.

Forestry Appeals Committee.

The appeal was considered at the sitting of the FAC held on the 3rd of October 2022. The FAC members present were: Mr. Myles MacDonncadha (Deputy Chairperson), Mr. Derek Daly, Mr. Iain Douglas and Secretary to the FAC: Mr. Michael Ryan.

Background

The proposal consists of the planting of 20.81 Ha. of GPC 6 (Oak forest) forestry in five plots. Plot 2 is separated from Plots 3 & 4 by a corridor for high voltage electricity line. and Plot 5 is located some 240m south of Plot 3 and separated from it by farmland.

The licence was referred to An Taisce and Leitrim County Council on the 27th of May 2021. An Taisce replied on the 23rd of June 2021 stating that as the site was close to Clooncoe Wood and Lough proposed Natural Heritage Area (pNHA) DAFM should satisfy itself that there will be no impact on the landscape and that Areas for Biodiversity Enhancement (ABE) is only 7% of the site area and not 10-15% as required by the Environmental Requirements for Afforestation Guidelines (2016). Leitrim

County Council Planning Section replied on the 29th of June 2021 stating that the site was in an area with a high capacity to absorb forestry; that no national monuments were affected and that the DAFM should satisfy itself of the need or otherwise of Environmental Impact Assessment & Appropriate Assessment of the proposal both by itself and in the context of forestry in the greater area. Attached was a further report by the District Engineer dated the 21st of June 2021 setting out conditions to be included in the licence and requiring compliance with DAFM standards

The application documents included a Pre-Approval Submission Report, Bio Diversity/Operational Maps (including revised maps), a Location Map, Site Notice, a photograph of the Site Notice in Situ, a Fencing map, Site Plots and Site Details Reports and a Species map.

On the DAFM file there is an Inspector's Certification Report, an Appropriate Assessment Screening Report (AASR), an Assessment to Determine EIA Requirement, an In-combination Statement and an Archaeology Report.

The Inspector's Certification Report dated the 20th of January 2022 recommends that the licence be approved subject to conditions including:

- *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).*
- *All existing trees and hedgerows within the site shall be retained.*
- *An unplanted public road setback of a minimum width of 10 metres (as measured from the surfaced edge of the public road) shall be installed in all broadleaf plots adjoining a public road, in accordance with the Tables 5 and 6 of the Environmental Requirements for Afforestation.*
- *A setback with a minimum width of 60 metres shall be installed from the dwelling houses at ITM (EPSG 2157) Easting: 612020.17 ITM (EPSG 2157) Northing: 795514.04, ITM (EPSG 2157) Easting: 612153.39 ITM (EPSG 2157) Northing: 795031.60 & ITM (EPSG 2157) Easting: 611570.00 ITM (EPSG 2157) Northing: 795560.16 in accordance with Table 5 and Table 6 of the Environmental Requirements for Afforestation.*

The District Inspector's AASR of the 20th of January 2022 determined that all three Natura 2000 sites identified as being within 15k of the site should be screened out.

The Inspector's Assessment to Determine EIA Requirement dated the 20th of January 2022 concludes that the proposed afforestation is not required to undergo EIA.

The DAFM Archaeologist's Report of the 28th of September 2021 requires a number of conditions to be attached to the licence including ;

- *10m unplanted buffer zone/setback around any historic buildings/structures and a 5m unplanted buffer around the attached infields and access lanes within the development area.*
- *5m unplanted buffer zone/setback along the line of the historic townland boundary.*
- *Any previously unrecorded archaeological site or artefact discovered during the course of the works on site must be left undisturbed and the relevant authorities notified immediately; A minimum exclusion zone of 20m, preferably 100m or more, must be created until the any such site has been properly investigated.*

The licence was subject of both a Desk Assessment and Field Inspection. The Field Inspection took place on the 19th of October 2021.

There were no third-party submissions on the licence.

Appeal

There is one third-party appeal against the decision to approve the licence.

The grounds of appeal are summarised as follows:

1. There is a relevant watercourse on site which is not marked on the biomap and the River Sub Basin Drumbad_10 not been assigned a status by EPA. The Hyland judgement is referred to.
2. The Yes response by the Inspector to the question on Q-value in the EIA screening is a serious error as no Q-value reference point.
3. The site drains to Clooncoe Woods & Lough pNHA. The 3km buffer is arbitrary given that a 15km buffer is used for AA. The licence should have been referred to the NPWS. The townland boundary is a watercourse.
4. The setbacks identified by the applicant's forester as ABE are not justified as being the best areas for biodiversity enhancement as is required. No evidence of ecology input into the selection of the ABE areas.
5. Historic features identified in the DAFM archaeology report have not been identified on the biomap, in particular in relation to the townland boundary, which is both a hedgerow and a watercourse.
6. The area for woody weed removal are not identified on the biomap. In the absence of the precise location of these areas there is a potential for impacts on water quality (sedimentation) and habitat loss.
7. There is no evidence of an assessment of the species listed in Annex IV of The Habitats Directive in particular bat and otter. Otters were present at a bridge 750m from site during a survey in 2010/2011.

Hearing

At the sitting of the FAC it had before it the full DAFM record of the decision, the notice and grounds of appeal and a Statement of Fact (SoF) provided by the DAFM and all materials on file. Having regard to the particular circumstances of the appeal, the FAC considered that it was not necessary to conduct an oral hearing in order to properly and fairly determine the appeal.

DAFM Statement of Fact provided to the FAC

The SoF provided by the DAFM dated 17th of June 2022 confirms the administrative details of the licence application and indicates that the licence application was desk assessed and a field assessment was carried out on the proposed afforestation on the 19th of October 2021. The SoF states that the DAFM was satisfied that all criteria in its standards and procedures were adhered to in making the decision on this licence application. The SoF included a statement dated the 23rd of May 2022 from the Forestry Inspector confirming that the Appropriate Assessment Screening was carried out using the procedures of November 2019, that the standard operating procedures were applied, and contained a response to the grounds of appeal.

Consideration by FAC.

Appropriate Assessment.

The proposed afforestation is not within a Natura 2000 site nor is it required for the management of a Natura 2000 site. The FAC has confirmed that the three sites identified for screening in the Inspector's AASR are the only sites within a 15Km threshold distance for impacts to Natura 2000 sites.

The FAC noted that the three Natura 2000 sites within 15Km of the proposed afforestation identified in the DAFM AASR dated the 20th of January 2021 were Ballykenny-Fisherstown Bog SPA (Site Code 004101), Clooneen Bog SAC (Site Code 002348) and Lough Forbes Complex SAC (Site Code 001818). The AASR determined that there was no likelihood that the proposed afforestation would have a significant effect on any of the Natura 2000 sites for the following reasons: the absence of any aquatic zone within or adjoining the project area; the absence of any significant relevant watercourse(s) within or adjoining the project area and distance of the Natura 2000 site from the proposed afforestation. The FAC further noted that the is a DAFM in-combination statement of the 14th of January 2022 concludes that there is no potential for the proposed project to contribute to any significant effect on any of the Natura 2000 sites when considered in-combination with other plans and projects.

The FAC noted that the pNHA, Clooncoe Wood and Lough (Site Code 000424) is circa 2.6 Km from the proposed afforestation and is not hydrologically connected to it.

The FAC is satisfied that, the Minister has not erred in the processing of the application in this regard.

Environmental Impact Assessment (EIA).

The FAC noted that the DAFM, in advance of making the decision to grant the licence carried out an Assessment to Determine EIA Requirement on the 20th of January 2021. This recorded a consideration of the application across a range of criteria relevant to the proposed afforestation, including water, soil, terrain, slope, designated areas, or landscape and cumulative effects, and determined that the project was not required to undergo EIA. The FAC noted that the location of the proposed afforestation is not classified as an Area of High Visual Amenity in the Leitrim County Development Plan 2015-2021.

The FAC is satisfied that, having regard to the nature, scale, and location of the proposal, the range and type of criteria considered in the Inspector's Assessment to Determine EIA Requirement, is adequate and appropriate for DAFM to determine whether EIA was required and that the Minister has not erred in the processing of the application in this regard.

Water Framework Directive (WFD).

EPA mapping shows the site lying within Catchment 26C Upper Shannon. The proposed afforestation lies within two sub catchments the Shannon Upper_SC_050 and Cloone[Lough Rynne]_SC_10. Forestry not identified as a pressure in either sub-catchment. The site is within the Drumbad_10 River Sub Basin. There is no WFD river water body on site but Plot 1 adjoins WFD river waterbody Cloone_30 which was of Good Status between 2013-2018 and is Not at Risk. The site lies across two groundwater bodies, Mohill IE_SH_G_171 which was of Good Status between 2013-2018 and is Not at Risk and the Annaghmore IE_SH_G_007 which also was of Good Status between 2013-2018 and is Not at Risk.

FAC Consideration of the Grounds of Appeal.

In addressing the grounds of appeal, the FAC considered the following:

WFD Status & Relevant Watercourse.

With regard to the appellant's contention that the Drumbad_10 River Sub Basin (RSB) has not been assigned a WFD status and that the DAFM cannot make a decision on the licence as set out in the Hyland judgement. The FAC noted that RSBs are not allocated a water quality status by the EPA and that the Hyland judgement deals solely with surface waters. The FAC further noted that the only WFD surface water body in the RSB is the River Waterbody Drumbad_10 which has been allocated Poor Status by the EPA and that its status is to be reviewed.

The FAC noted that the definition of Relevant Watercourse is set out in the Environmental Requirements for Afforestation 2016 as *"A watercourse that is not shown on an OS 6 inch map but which: is connected to an aquatic zone onsite, adjoining the site or elsewhere; and has the potential to carry significant amounts of sediments/nutrients, or shows evidence of erosion/deposition"*. The FAC further noted that site was inspected in the field on the 19th of October 2021 and that the Inspector had viewed the watercourses subsequently referred to in the appeal on that date. The Inspector states that the watercourses are *"heavily vegetated field drains on generally flat ground, no apparent connections to EPA streams"* given this information the watercourses on the site do not meet the definition of "Relevant Watercourse". The FAC does not consider that the DAFM erred as it relates to this ground of appeal.

Proposed Natural Heritage Area.

The FAC noted that the proposed afforestation is circa 2.6 Km north of the Clooncoe Wood and Lough pNHA (Site Code 000424) and is not hydrologically connected to it. The FAC also noted that the DAFM determined that it was not necessary to refer this licence application to the National Parks & Wildlife Service (NPWS) in line with standard procedure. The FAC further noted that while Clooncoe Wood and Lough pNHA has not been statutorily proposed or designated the ecological value of the pNHA has protection through a number of government initiatives, including those of the Forest Service prior to any statutory designation. The FAC does not consider that the DAFM erred as it relates to this ground of appeal.

Areas of Biological Enhancement.

With regard to the appellant's contention that the Areas of Biodiversity Enhancement (ABE) shown on the biomap are *"not consistent with the requirement for Areas for Biodiversity Enhancement Biodiversity Enhancement Biodiversity Enhancement to be the best areas for this objective"*. The FAC noted that the ABE referred to on the biomaps consist of setbacks for public roads, hedgerows and dwellings and that use of these setbacks as ABE complies with the DAFM Environmental Requirements for Afforestation 2016. The FAC noted additional setbacks are required to comply with the conditions of the archaeological report which also qualify as ABE. The FAC does not consider that the DAFM erred as it relates to this ground of appeal.

Townland Boundary.

The FAC noted that the Inspector's SoF stated that the townland boundary is shown on the biomap marked has a hedgerow and that townland boundaries are not archaeological features and as such are not required to be identified on biomaps. The DAFM archaeologist also pointed out that townland boundaries do not fall into the category of archaeological remains but rather are historical remains. The FAC noted that the archaeology report includes conditions protecting a number of historical features on the site including, the townland boundary, farmyards, access lanes/footpaths/roads. The FAC does not consider that the DAFM erred as it relates to this ground of appeal.

Woody Weed Removal.

The FAC noted that areas of woody weed are not required to be identified on biomaps and that the content of biomaps is set out in the Forestry Standards Manual 2015. The FAC also noted the

Inspector's response to this ground of appeal which states that *"Woody weeds by their nature tend to grow and be unpredictable, it would be unreasonable and onerous to attempt to map precise locations of operations that may or may not be necessary in a given area"*. The FAC further noted that the DAFM accepted the biomaps as compliant and so does not consider that the DAFM erred as it relates to this ground of appeal.

Otters & Bats.

The FAC noted that the site of the proposed afforestation does not adjoin or is crossed by an aquatic zone and that the appellant has adduced no evidence as to the presence of otter or bat in the area of the proposed afforestation. The FAC noted that both otter and bat are protected under the Wildlife Act 1976 (as amended) and that the DFAM have published Forestry and Otter Guidelines 2009 to which forestry operators are required to adhere as set out in Section 14.1 of the Forestry Standards Manual 2015. The FAC does not consider that the DAFM erred as it relates to this ground of appeal.

Conclusion

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal and the Statement of Fact submitted by the DAFM. In accordance with Article 14B of the Agricultural Appeals Act 2001(as amended) the FAC is satisfied that no 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. The FAC is thus affirming the decision of the Minister to grant licence CN88460 in accordance with Section 14B of the Agricultural Appeals Act 2001, as amended. In deciding to affirm the decision, the FAC considered that the proposed development would be consistent with Government policy, the Habitats Directive, good forestry practice, the protection of the environment, health and public safety.

Yours sincerely,

Iain Douglas,
On Behalf of the Forestry Appeals Committee