



29th September 2022.

Subject: Appeals FAC 030/2021 and 031/2021-regarding licence CN84397

Dear

I refer to appeals made 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 2001, as amended, has now completed an examination of the facts and evidence provided by all parties to the appeal.

Background

Licence CN84397 is for the afforestation of 6.94 hectares with the construction of 974 metres of fencing at Kilcreevanty, Co. Galway which was approved by the Department of Agriculture, Food and the Marine (DAFM) on the 14th January 2021 subject to a number of standard conditions including condition no 5 to retain all hedgerows, - adhere to forestry & water quality guidelines, - all guidelines to apply.

Hearing

A hearing of appeal 030/2021 including 031/2021 was held by a division of the FAC on the 11th October 2021. The FAC members in attendance at the hearing were Mr. Myles Mac Donncadha (Chairperson), Mr. Iain Douglas and Mr Derek Daly. The FAC noted the request for an oral hearing by both appellants. Having reviewed all the documentation and submissions, including those of the appellants, the FAC considered that there was sufficient information to enable it to assess and determine the appeal without recourse to an oral hearing.

Decision

Having regard to the evidence before it, including the record of the decision by the DAFM, the notice of appeal and all submissions received, and, in particular, the following considerations, the FAC has decided to affirm the decision of the Minister regarding licence CN84397.

Licence

The licence pertains to the afforestation in relation to an area of 6.94 hectares at Kilcreevanty, Co. Galway. The application also provides for 974 metres of fencing. Documentation submitted includes site notice, environmental and operational details and mapping including a fencing map and biomaps. There were

revisions made to the project in the course of its assessment by DAFM and the details of the 6th April 2020 are the most relevant as these formed the basis of subsequent assessment and the conditions of the approved licence. The site is divided into three plots. In plot 1 the easternmost plot which has an area of 5.55 hectares GPC 3 planting is proposed with a mix of Sitka Spruce and ADB; in plot 2 with an area of 0.38 hectares GPC 9 - NWE planting is proposed and plot 3 with an area of 1.01 hectares is proposed as a bio area. Plots 2 and 3 are contiguous and there is a separation corridor between plot 1 and those of plots 2 and 3.

Documentation on file in the Inspector's Certification refers to the site refers to the predominant soil type underlying the project area as predominantly podzolic in nature. The slope is predominantly flat to moderate. The project area is crossed by / adjoins an aquatic zone(s). The vegetation type(s) within the project area comprise grass/rush. It is noted that the report of the Ecologist also on file indicates that, other than a well in Plot 3, there are no aquatic zones or relevant watercourses within the project area. The project site is within the Clare (Galway)_030 River Waterbody WFD, the status of which is good and in terms of risk is indicated as not at risk.

The licence application was referred to the Western Region Fisheries Board with no reply. A number of third party submissions were made to DAFM.

The assessment of the licence application by DAFM included a desk and field assessment by the Forestry Inspector and Ecologist.

Appropriate Assessment (AA) Screening identified seven Natura 2000 Sites within 15 kilometres. An Appropriate Assessment Screening Determination dated the 8th January 2021 screened out six Natura sites, Ardkill Turlough SAC (000461); Carrowkeel Turlough SAC (000475); Greaghans Turlough SAC (000503); Kilglassan/Caheravoostia Turlough Complex SAC (000504); Lough Corrib SAC (000297) and Shrulle Turlough SAC (000525). Reasons stated for screening out include that the project is not located within the zone of groundwater contribution for the Natura site; the location of project area in a separate WFD groundwater body catchment to the Natura site; absence of swallow holes/ karst features within the project area; low groundwater vulnerability and low subsoil permeability within the project area; no hydrological connectivity; there are no aquatic / relevant watercourses within /adjacent to the project area and distance from project area to the Qualifying Interest (QI). One site Levally Lough SAC (000295) was screened in due to potential groundwater connectivity between the project area and the Natura site.

The AA report dated 8th January 2021 considered potential groundwater connectivity between the project area and Levally Lough SAC (000295) and examined the QIs of the Natura site. In relation to Turloughs it indicated that there is a well (and associated drains) located in Plot 3 from which water appears to drain away underground (via groundwater). Given the location of the project area in the same groundwater body catchment (Clare-Corrib IE_WE_G_0020) as the SAC and following the precautionary principle the report indicated that there may be potential groundwater connectivity between the project area and the SAC and therefore, the potential exists for adverse effects on this QI via deterioration in water quality due to forestry operations. By way of mitigation Plot 3 is to be retained as a bio plot and left unplanted. The

report also considered potential in-combination effects with other projects focusing on the general vicinity of the project area in the River Sub-Basin Clare (Galway)_030 with the in-combination statement concluding that the proposed afforestation, with mitigation measures identified, will itself (i.e., individually) not result in any adverse effect or residual adverse effects on the integrity of Levally Lough SAC (000295). There is therefore no potential for the proposed works to contribute to any cumulative adverse effects on this European site, when considered in-combination with other plans and projects and deemed that this project, when considered in combination with other plans and projects, will not give rise to any adverse effect on the integrity of any European Site.

The Appropriate Assessment Determination (AAD) dated 8th January 2021 determined that the project proposed under CN84397, individually or in combination with other plans or projects, will not adversely affect the integrity of any of the aforementioned European Sites, having regard to their conservation objectives, if carried out and completed in accordance with the Environmental Requirements for Afforestation, December 2016 (DAFM, 2016) and the Forestry Standards Manual (DAFM, 2015), and provided the following mitigation is implemented: → Plot 3 is to be retained as a bio-plot. The AAD concluded that DAFM deems that CN84397, when considered in combination with other plans and projects, will not give rise to the possibility of an effect on the Natura site(s) listed above. Therefore, the Minister for Agriculture, Food & the Marine has determined, pursuant to Regulation 42(16) of the European Communities (Birds and Natural Habitats) Regulations 2011 (as amended) and Regulation 19(5) of the Forestry Regulations 2017 (as amended), based on objective information, that no reasonable scientific doubt remains as to the absence of any adverse effect on the integrity of any European site.

The final Inspector's Certification screened out all Natura sites with no likelihood of a significant effect on any European site.

Appeal

There are two appeals against the decision to grant the licence.

Appeal in relation to 030/2021 refers to;

- Pollution is raised as a concern arising from the potential of chemicals entering an underground shore which in turn enters the River Clare and which in turns flows into Lough Corrib.
- Overshadowing of the appellant's dwelling and lands resulting on loss of light, loss of views and impairment growth on his lands.
- Flooding of his lands. Photos are submitted in support of this grounds.
- The planting will impact on a spring well and there are two public rights of way to this well.
- The proposal will be detrimental to wildlife.
- An existing right of way to a bog must be retained.
- Telecommunication reception will be affected by the project.

- An oral hearing is requested.

The appeal in relation to 031/2021 refers to;

- Pollution with impact on the River Clare and Lough Corrib.
- Overshadowing and loss of sunlight impacting on grass growth and loss of sunlight generally.
- Flooding concerns in relation to lands and roads.
- Impact on wildlife, flora and fauna not addressed in ecology report.
- The planting will impact on access to the village well and water quality of the well.
- Impact on access rights to a bog.
- Issues of stress
- An oral hearing is requested.
- It is indicated that there is major local opposition to the project.

In a statement to the FAC, the DAFM indicated that the decision was issued in accordance with DAFM procedures, S.I. 191/2017 and the 2014 Forestry Act. The Statement from the Forestry Inspectorate outlines the chronology of the assessment of the project including requesting revisions to the original proposal. The AA Screening is referred to, including engaging with the DAFM Ecologist and the subsequent AA Determination by DAFM. There is also reference to the revision of the original plan to introduce an unplanted Bio Plot and Native Woodland Plot and that these changes were adopted to take account of landscape and other issues raised by submissions received, and mitigation as listed in AA Determination.

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.

In considering the appeal the FAC noted that the EU EIA Directive sets out in Annex I, a list of projects for which EIA is mandatory and that 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 Forestry Regulations 2017, in relation to forestry licence applications, require the compliance with the EIA process for applications relating to afforestation which involve 50 hectares or more and 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 is for the afforestation of 6.94 hectares which is substantially sub threshold for mandatory EIA as set in Irish Regulations. The DAFM recorded a consideration of the proposal across a series of criteria including the Project Description, Existing Land Use, Cumulative effect and extent of project, Soil, Water and Landscape. The DAFM also recorded a

separate Appropriate Assessment and recorded information provided by the Applicant in relation to the scale, nature and location of the proposal. Having regard to the record of the decision and the submitted grounds, and the nature, scale and location of the proposal, the FAC is satisfied that the DAFM did not err in its decision concerning EIA.

The FAC examined the Appropriate Assessment Screening undertaken by the DAFM as it related to the afforestation of 6.94 hectares. Having examined the documentation submitted which includes an AA Screening, AA Report and an AA Determination, the FAC has identified the same seven sites as the DAFM as being within 15km from the proposal. The FAC considered the nature, scale and location of the proposal, the Natura 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 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.

In relation to a pathway of effects to a European site and potential hydrological impacts on water quality generally the FAC noted that in the assessment of the project potential hydrological connectivity was examined and identified in the course of the AA Screening and applying a precautionary principle by way of mitigation Plot 3 is to be retained as a bio plot. It is noted that reference is also made to an underground shore in the grounds of appeal but the conditions of the licence provide for adherence to forestry & water quality guidelines and the FAC deems these to be adequate in this case. It is noted that the site is currently in agricultural use and run off underground or to surface drains occurs. It is also noted that flooding has occurred but this flooding arises without the presence of the proposed project and there is no evidence to conclude that the project will contribute to an increased risk of flooding. The FAC is therefore satisfied, having regard to the record of the decision, that no a serious or significant error was made in the decision regarding Appropriate Assessment screening and assessment of potential hydrological impacts.

In relation to other matters arising in the grounds of appeal the FAC noted that the appellants raised concerns in relation to rights of way to the well and also to bogs. The FAC are not in a position to adjudicate on legal entitlements in relation to rights of way but would note that a granting of a licence does not confer any entitlements to remove any established rights which exist.

In relation to the impact on dwellings, it is noted that the dwelling most proximate to the proposed development is located to the southwest and adjoining plot 3, which will be left unplanted. The boundary of Plot 2, to contain deciduous woodland (GPC 9) will be approximately 60m from the dwelling and therefore loss of sunlight is very unlikely to arise with respect to this dwelling. In respect to boundaries with adjoining agricultural land the FAC notes that forestry regulations and standards provide for setback from common boundaries are provided for in the project.

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 CN84397 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