



30th September 2022

Subject: Appeal FAC076/2022 against licence decision CN88764

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 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 the parties to the appeal.

Hearing

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. A hearing of appeal FAC076/2022 was held remotely by the FAC on 21st September 2022. In attendance:

FAC Members: Mr. John Evans (Deputy Chairperson), Mr. Iain Douglas & Mr. Vincent Upton
Secretary to the FAC: Mr. Michael Ryan

Decision

Having regard to the evidence before it, including the record of the decision, the notice of appeal, and submissions received, the Forestry Appeals Committee (FAC) has decided to set aside and remit the decision of the Minister for Agriculture, Food and the Marine to grant the licence CN88764. The reasons for this decision are set out hereunder.

Background

The appeal relates to a refusal for afforestation of 4.44 hectares at Ballynagorkagh, Co. Waterford. The application includes operational details, environmental considerations and maps. It is noted in the application that the lands lie upstream from a Special Area of Conservation. The lands are described as enclosed, agricultural land with a mineral soil and neutral aspect and not exposed with a vegetation type of grass, grass rush, sedge & rush, bracken/briar, and furze. The land would be planted as a native woodland with an integrated mix of common alder, downy birch, pedunculate oak and other broadleaves. No fertilisation or additional drainage of the lands is proposed and 480 metres of sheep/stock fencing is proposed. Pit and slit planting would follow invert mounding. A site notice dated 27th May 2021 and a photo of an erected site notice are on the record. The application records access as provided. The maps include a Biomap that show the outline of the proposal and a number of environmental features include a public walkway adjacent to the lands. A river, Annestown River, flows to the east of the lands.

The proposal was field inspected by a DAFM Forestry Inspector and a DAFM Ecologist. The record includes a screening for Appropriate Assessment (AA) as part of the certification. Four sites are identified within 15km of the proposal. One site, Mid-Waterford Coast SPA 004193, was screened in for AA on the basis that "Sections of project area designated as Semi-natural Grassland designation". A second AA screening was completed by a DAFM ecologist who screened out all European sites and concluded that an AA was not required in this case following a field inspection and habitat survey.

The Ecologist prepared an Ecology Report concerning the site. This followed a field inspection and the recording of habitats on the lands. The lands are described as being prone to flooding with 1:1000, 1:100 and 1:20 probabilities. The lands are described as an Irish Wetlands Site and reference is made to an external map of wetlands. Reference was made to the County Development Plan (CDP) and its objectives and recognition of wetlands under the CDP and the surveying of the lands as part of a National Grassland Survey. No Annex I¹ grassland habitats were identified at the survey site.

A referral was made to the local authority and no response is recorded. The proposal was referred to a DAFM Archaeologist which replied that in the event of a licence being issued, it would require no additional conditions other than normal adherence with DAFM guidelines and requirements. The refusal letter was issued on 23rd June 2022. The refusal letter states,

- Environmental Considerations

The proposal is within Annestown Wetland and has been identified as species rich wet grassland of county importance likely to develop into priority Annex 1 Habitat (see Ecology Report by Ecologist)

Appeal

There is one first party appeal against the refusal decision. The grounds submit that the parcel of agricultural land had been previously approved under a different licence and that if left out of agricultural use that it would revert to native woodland over time. It is submitted that the local community has invested a lot in developing a Geopark and amenity walkway in the area.

It is submitted that the proposal lands are agricultural grasslands that have been used for silage production for years and that the owner wishes to add to the area by establishing 10 acres of native woodland to provide additional biodiversity and aesthetics to the area. It is submitted that the new application was made to include an identified forester who is described as having developed a "Neighbourwood" in Dunmore East which was a great success and addition to the area.

DAFM Statement

A statement was submitted by the DAFM in response to the appeal which stated that the decision was issued in accordance with DAFM procedures, S.I. 191/2017 and the 2014 Forestry Act. The statement continues with a description of the inspection of the lands. It is submitted that the area falls with the Irish Semi-Natural Grassland Survey (2015-2017) and a description is made of the species on site. It is submitted

¹ Annex I of Council Directive 92/43/EEC

that lands lie on alluvium mineral and peat soils and is very wet in winter and partially dry in summer. Parts of the lands were described as being too wet for afforestation. It is submitted that an AA screening was carried out and the Inspector recommended a Habitat Survey be completed given the nature of the lands. It is submitted that the Ecological Report recommended refusal.

Considerations

While the Appellant noted that a previous licence was granted for this site, the FAC considers that the decision before it is that of the 23rd June 2022 and it is this decision and the related reasons and evidence provided that it can consider.

Furthermore, the Appellant's grounds speak to the amenity value of the proposal. The area generally as noted appears to be of recreational and biodiversity value and the Appellant has noted that the community has played a role in the development of the area. The maps submitted by the Appellant specifically identify a walkway that adjoins the lands. The FAC considers that the amenity value of the proposal has not been questioned and that the reasons provided by the DAFM for the refusal do not relate to this benefit.

The FAC considered the reasons outlined for the refusal in the context of the grounds of appeal. The reasons provided appear to relate largely to the DAFM Ecology Report. The FAC noted that, as recorded in the Ecology Report, that the County Development Plan (CDP) 2011-2017 had been extended and that a new plan was in development. The plan for 2022-2028 came into effect on 19th July 2022 and after the licence decision was made. The FAC does not consider that referral to the 2011-2017 plan constitutes an error.

The DAFM describe the area as forming part of Annestown wetland and refer to a wetland survey in relation to this and provide the URL and a map associated with this survey. However, it appears from this map that Annestown wetland, as identified, lies further to the south from this area. This is also reflected in the maps associated with the new CDP² which may not have been available at the time of the decision. While the area clearly has characteristics of a wetland habitat it is not clear from the reasons and resources provided that this specific land falls within Annestown wetland for the purposes of the CDP and does not appear to be identified as such in the 2022-2028 CDP Wetlands Map. The application was referred to the local authority and it is unfortunate that they did not provide observations on the application to provide clarity on the matter. The area may form part of the wider wetland complex but the reasons provided specifically relate to the Annestown wetland as identified in the County Development Plan. Furthermore, the DAFM have not explained how this led to the refusal of the proposal in relation to possible impacts on the wetland. The FAC considers this is of importance given the additional reasons provided and the nature of the proposal to establish native woodland of species associated with alluvial woodland, which are documented to form part of this wetland network. It would appear to the FAC that the proposal could generally be in keeping with many of the objectives of the CDP identified in the Ecology report.

² <https://storymaps.arcgis.com/stories/c405cfe0213145f589ceb44de1a1624f>

The other reasons provided for the refusal decision relate to the habitats on the lands. The FAC recognises that the site was field inspected by both a DAFM Forestry Inspector and Ecologist and that a detailed report was prepared in relation to the application. The FAC understands from this that there are currently no Annex I habitats on site and that the reason provided for refusal is that the land has the capacity to develop into an Annex I habitat, namely 91E0 Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*).

The FAC noted that DAFMs *Environmental Requirements for Afforestation* states that “The Forest Service will not approve the afforestation of a non-designated Annex I habitat that is deemed to be in favourable condition.” However, in this case no Annex I habitat has been identified on site by the DAFM or in previous third party surveys referenced in the report and, furthermore, it appears that the proposal has the potential to result in the development of Annex I habitat on the lands in the form of alluvial forest.

The landowner has submitted that the land is currently in agricultural use and that silage is cut on the land annually and this has not been disputed. The land to the north of the proposal lands appears to lie on similar soils and is documented as having developed into an alluvial woodland. The FAC considers it likely that the proposal lands have not reverted to woodland due to agricultural practices on the land which the landowner can continue and, to an extent, intensify without further permissions.

In this context the FAC considers it questionable that the land would develop into alluvial woodland if the current land use practices are continued. Alternatively, it would appear to the FAC that the landowner is proposing to establish species that are associated with this habitat type and to facilitate the development of alluvial woodland on the lands. Indeed, the area of woodland to the north of the lands which are identified in the wetland survey resource as consisting of Annex I habitat is comprised of species that the landowner wishes to establish. The FAC considers that the proposal includes very limited ground preparation and operations, no chemical inputs are proposed and no mound drains or additional drainage is proposed. The Ecology report records concerns related to the loss/destruction of the wetland habitat and the fact that the land will likely develop into alluvial woodland but makes no reference to the nature or details of the proposal itself or how any loss or destruction might come about.

The FAC therefore considers that the reasons provided for the decision do not in themselves explain the decision to refuse the application as they appear contradictory having regard to the current land use and the nature of the proposal. The FAC is satisfied that this constitutes a serious error. The FAC does not consider that the evidence before it is sufficient to substitute a decision of the FAC for a decision of the Minister. Therefore, the FAC is setting aside and remitting the decision to the Minister to make a new decision.

The FAC recognises the sensitivity of the site and would consider it reasonable for the Minister to seek any further clarifications regarding the operations as was considered necessary and, further, that the Minister could place conditions regarding the operations, including those related to species and stocking or exclusions and setbacks, that were considered necessary. The Minister might also refer the application to the NPWS or consult specifically with NPWS staff on the proposal and operations as they appear to

have surveyed the area based on the resources referred to in the Ecology Report. As documented in the wetland map provided by the DAFM, this area generally has seen the deliberate creation of new wetland habitats and the proposal would appear to represent a potential opportunity to further this process. The FAC considers that the application may be refused again and that new reasons might be provided for the refusal, however, the FAC considers that should the application be refused again that the reasons provided should account for the current land use and the nature of the proposal.

In considering the appeal the FAC had regard to the record of the decision, the submitted grounds of appeal, and submissions received. The FAC is satisfied that a serious error was made in making the decision. The FAC is, thus, setting aside and remitting the decision to the Minister regarding licence CN88764 in line with Article 14B of the Agricultural Appeals Act 2001, as amended, to make a new decision on the application and to provide reasons that account for the current land use and nature of the proposal.

Yours sincerely,

Vincent Upton, On Behalf of the Forestry Appeals Committee

