



12th July 2023

Subject: Appeal FAC051/2022 against licence decision CN87630

Dear

I refer to the appeal to the Forestry Appeals Committee 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 Forestry Appeals Committee considered that it was not necessary to conduct an oral hearing in order to properly and fairly determine the appeal. A hearing of appeal FAC051/2022 was held remotely by the FAC on 14th June 2023. In attendance:

FAC Members: Mr. John Evans (Deputy Chairperson), Mr. Derek Daly & Mr. Vincent Upton

Secretary to the FAC: Ms. Vanessa Healy

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 CN87630. The reasons for this decision are set out hereunder.

Background

The licence decision relates to an application for afforestation on 3.42 hectares at Killerduff, Mayo. Planting would be across five plots and would be comprised of a mixture of Sitka spruce and broadleaves in Plots 1, 3 and 4 (0.54 ha, 0.43 ha and 0.64ha), Sitka spruce, lodgepole pine and broadleaves in Plot 2 (0.77 ha) and silver birch and broadleaves in Plot 5 (1,04ha). Ground preparation would be through mounding with additional drainage and manual weed control and no fertiliser application. The application includes 473 metres of stock fencing.

In addition to describing the operations, the application included environmental information and a series of maps. The maps included a fencing, species map and a biomap that identifies environmental features on the lands and in the landscape. The proposal lands are described as enclosed, agricultural

land on a mineral peat soil and with a grass, grass rush vegetation type. The application submits that there is adequate access in place. A river is marked at the western boundary of plot 4. The location of the Record Monuments to the west and east are also marked as are the locations of the site notices. Photographs of the site notices and the erected site notices are on the file.

There were three submissions on the application, all objections. This included the Appellant's objection letter that was subsequently submitted with their appeal. Two other objections were submitted that referred to perceived negative impacts on local lands and dwellings. A watermain crossing the lands was also described.

A letter was issued to the Applicant on 26th May 2021 stating that a plot was unsuitable for conifers and that a suitable broadleaf species should be selected, that a land types assessment on a plot was required, and that an aquatic zone on two plots were required to be mapped. A reminder letter was also sent.

A letter issued to the Applicant on 1st October 2021 referring to the letter of 26th May requesting the required information and stating that if no response was received after four weeks the file would be withdrawn. A letter was issued to the Applicant from the DAFM dated 25th November 2021 stating that the application area had increased to 3.89 ha and that new site notices were required and requested changes to species and mapping.

The DAFM file includes a screening for Appropriate Assessment which identifies five European sites within 15km of the proposal, Bellacorick Bog Complex SAC, Glenamoy Bog Complex SAC, Killala Bay/Moy Estuary SAC, Killala Bay/Moy Estuary SPA, and Lackan Saltmarsh and Kilcummin Head SAC. Each site is considered in turn and screened out and reasons are provided. The DAFM also recorded a consideration of other plans and projects in the area.

The file also includes a consideration of the proposal across of a series of criteria and a conclusion that the proposal was not required to proceed to the Environmental Impact Assessment (EIA) process.

The licence was approved on 4th May 2022 for an area of 3.42 ha subject to conditions, including specific archaeological conditions.

Appeal

There is one third party appeal to the decision to grant licence and the full Notice of Appeal has been provided to all parties. In summary, the grounds submit that the Appellant made an objection on the application and that, while some welcome changes were made, their objections have not been addressed in full. In particular there is emphasis on the use of a shared private road to the site.

The original objection letter was appended to the Notice of Appeal. This raised concerns in relation to access on the shared road, impacts on landscape, archaeology and setbacks, power line corridors, a risk of Bovine TB, insurance costs, drinking supply and light. The letter also noted concerns in relation to

consultation and property values. The letter included a number of photographs of the lands and surrounding area.

The DAFM provided a statement in response to the appeal in which the processing of the application is outlined. This submits that the application was referred to the N W Regional Fisheries Board, An Taisce and Mayo County Council and no replies were provided. It is also noted that a report was prepared by a DAFM Archaeologist and agreed with the National Monuments Service. The statement submits that the decision was made in keeping with DAFM procedures, the Forestry Regulations 2017 and the Forestry Act 2014.

The statement goes on to suggest that the conditions of the licence should be revised to specify a 10 metre setback from the private road that leads to the Appellant's dwelling. The statement submits that the proposed areas have access to a public road and that creation of new entrances to a public road are a matter for the County Council, while the creation of a new forest road entrance is a matter for the DAFM and that the Forest Road Scheme is not applicable to an afforestation application. It is submitted that only one plot, Plot 5, lies within a Scenic Route 1km buffer area and that the species in this plot was amended to broadleaf, birch, due to its location and proximity to the Appellant's dwelling. Further it is submitted that the proposal is of a relatively small scale, dispersed in 5 plots of varying species combination with setbacks and broadleaf planting in a gently sloping lowland landscape and that the proposed forest is visually acceptable and in keeping with landscape and amenity sensitivities and acceptable in the landscape.

It is submitted that a 20 metre corridor is excluded from the application area for 10/20KV line between plots 3 and 4. It is submitted that insurance is a matter for the Appellant and their provider and that the fire risk is low noting the nature of the proposal and location and natural and man-made fire breaks. It is submitted that there is no information on the local water distribution network on the DAFM system in relation to the area and that appropriate setbacks for maintenance and repair would be required. In relation to the Appellant's dwelling, it is submitted that the forest would lie 60 metres to the north and 175 metres to the south, that existing trees are on site, and that the proposal would not have a significant impact on light levels to the dwelling.

A separate statement, dated 17th June 2022 and prepared by a DAFM archaeologist, was submitted to address archaeological matters. This submits that the proposal area does not contain, nor is contiguous to, any Record Monument while two ringforts lie 80 metres and 160 metres respectively from Plot 5. A further monument is noted some 250 metres from Plot 2. Within the boundaries of the property a number of historic farmyards and settlements are noted. The response notes that a report was prepared on the application dated 20th April 2021 with recommendations and these were referred to the National Monuments Service (NMS) for agreement which was received. The submission of the DAFM Archaeologist was that in relation to the protection of archaeological resources there is nothing that would have changed the substance of the decision and that no additional conditions were required. The report notes that the recorded monuments lie outside of the proposal and that the initial report was agreed with the NMS, that non-designated built heritage structures lie within the setback from the

modern dwelling and the condition to adhere with the Environmental Requirements for Afforestation, the archaeological condition attached to the licence, and the location of the lands. An amended report on the application, with the same dated, was also submitted.

The Appellant wrote to the FAC on 11th April 2023 with a number of observations in relation to access, landscape, archaeology and the statement made by the DAFM.

The DAFM made a further submission dated 26th April 2023, described as a supplemental report, in response to the suggestion that there was a lack of clarity on what changes might have been made and whether these were material to the referral to the National Monuments Service.

Considerations of FAC

As specified in the Agriculture Appeals Act 2001, as amended, the FAC considers appeals made against certain decisions of the Minister for Agriculture, Food and the Marine made under the Forestry Act 2014 and the Forestry Regulations 2017.

The FAC considered in the first instance the grounds that related to the use of what is described as a private right of way leading to the proposal lands and the lands of the Appellant. As the FAC understands the grounds, the Appellant does not contest that the Applicant has a right of way along this route but submits that the Applicant does not have the Appellant's permission to use the road for the purposes of forestry. The Appellant further submitted that they use this for agricultural purposes. The FAC understands the route in question to be that leading from the public road to the northern plot of the proposal (Plot 5). This is identified as an access route in the application and a site notice was erected at the entrance. The FAC considers these grounds to pertain to the use of a right of way on private land and that this constitutes a civil matter that does not fall within the remit of the FAC to determine.

The Applicant identified access to the lands on their application and two site notices were erected which informed the public of the application. Three submissions were made on the application by members of the public, including the Appellant. The FAC considers this to be the appropriate form of public consultation as provided for in the Forestry Regulations 2017. The proposal for this section of land (Plot 5) is to plant silver birch and other broadleaves, conditioned to be birch and rowan, and so will be comprised of light-crowned native broadleaf species. Such species are not associated with the volume and management practices related to commercial conifer species. Having regard to the remit of the FAC as provided in the Agriculture Appeals Act 2001, the FAC is not satisfied that an error occurred in the making of the decision in relation to the related grounds of appeal.

In their response, the DAFM submit that it had been their intention to attach a condition related to a setback from the private laneway. For reasons outlined below the decision is being remitted to the Minister. Should this result in a decision to grant a licence, such a condition may be included.

A number of grounds relate to archaeological matters. The application identified two recorded monuments within 200 metres of the proposal. The report also notes the proximity to the Ballyglass

Neolithic House and Court Tomb (MA 007-045001/2) which is 250 metres to the south. The proposal was referred to a DAFM archaeologist who prepared a report and set down specific conditions that related to setbacks and the undertaking of archaeological monitoring of the works that are proposed. These conditions were agreed with the National Monument Service. The application was also referred to the County Council and An Taisce which did not make a submission. There are no recorded monuments on the land and the closest monument is at a considerable remove from the proposal boundary. The grounds refer to the Céide Fields which the FAC notes lie some 4.5 km from the proposal. The proposal lies in a managed agricultural landscape and the northern plot (plot 5) which is closest to the ringforts would be planted with silver birch, a light crowned native broadleaf species. The proposed operations are conditioned to be subject to archaeological monitoring. The FAC considers these matters to be well considered as part of the processing of the application and is not satisfied that an error was made in the making of the decision.

In relation to the non-designated buildings, the conditions of the licence and the Environmental Requirements for Afforestation would extend to all such buildings on the lands. However, in the statement provided the DAFM suggested that the archaeological report and associated conditions could be amended to make the requirement more specific to non-designated historic farm buildings on the lands. As the decision is being remitted the Minister may make such amendments in making a new decision.

In relation to the general landscape, the FAC considers specific decisions of the Minister for Agriculture, Food and the Marine as provided under the Agriculture Appeals Act 2001. The DAFM noted that the northern section of the proposal, that is closes to the Appellant's dwelling, lies in a landscape designated in the County Development Plan. They described how this led them to seek an amendment of the species to be planted in this section to birch, a native broadleaf species. The lands lie to the south of the main public road (R314) and to the west of a minor public road and would not impact on views from the public road to the coast. The proposal was referred to the County Council and An Taisce which did not respond. The proposal includes setbacks from dwellings of 60 metres and setbacks from roads and aquatic setbacks in addition to those required under the archaeological conditions. The lands are enclosed, agricultural land in a managed agricultural landscape.

The FAC also considered these matters in the context of the requirement to screen for Environmental Impact Assessment, the record includes a document entitled Assessment for EIA Requirement. Annex II of the EU EIA Directive (2011/92/EU as amended by 2014/52/EU) identifies classes of development for which Member States may set thresholds or criteria for requiring environmental impact assessment. This includes "initial afforestation and deforestation for the purpose of conversion to another type of land use" and road construction. The Forestry Regulations 2017, SI 191 of 2017, require that afforestation of 50 hectares or more be subject to an Environmental Impact Assessment (EIA). Afforestation of less than the threshold of 50 hectares but which the Minister considers likely to have significant effects on the environment, taking into account the criteria set out in Schedule 3, must also be subject to EIA. At 3.42 hectares the proposal is significantly below this threshold.

When making an application for a forest licence, an applicant must provide the information in Schedule 1 of the Forestry Regulations 2017. This includes a physical description of the whole project and location; a description of the aspects of the environment likely to be significantly affected and a description of any likely significant effects on the environment from the expected residues, emissions, and waste where relevant and the use of natural resources, to the extent of the information available on such effects. This information must take account of the criteria identified in Schedule 3 of the Forestry Regulations 2017. The application includes details of the proposed operations and a series of maps including detailed maps showing environmental features on and surrounding the lands. In addition to the environmental features on the maps provided, the application includes a range of other environmental considerations. The application also recorded a number of responses to questions that relate to possible effects on the environment some of which automatically require the submission of an additional report and further information on the nature of effects and measures to mitigate such effects. In this instance no additional reports were submitted as part of the original application. However, the application did trigger a number of referrals by the DAFM to the County Council, An Taisce and NW Regional Fisheries Board. In relation to this last body, the FAC notes that the North Western Regional Fisheries Board now forms part of Inland Fisheries Ireland, whose offices are located at the same address as the former Regional Board.

The screening document relies on guidelines, including in relation to landscape which is referenced as a concern in the appeal, that have been replaced by the Environmental Requirements for Afforestation (DAFM) according to that document. Neither were these guidelines attached as conditions of the licence. The reliance on these documents constitutes a serious error.

Furthermore, the screening document records that the application has self-assessed whether the area is within an area of high nutrient sensitivity but there is no evidence of this or explanation offered in the screening document.

The grounds contend that the proposal would impact on the Appellant's property and dwelling in a number of ways. In relation to badger and deer, the proposal is for the small, field scale establishment of forest on agricultural land across spatially separated parcels. Over time as the forest develops, it may become a suitable habitat for a number of species that could potentially include badger. Hedgerows and trees on agricultural land and other features in the landscape can also provide suitable habitat for this species. However, the management of bovine TB is a management and national policy issue and should be addressed in that context. The DAFM have published a Bovine TB Eradication Strategy 2021-2030¹ which does not include restrictions on afforestation. The FAC is not satisfied that an error occurred in the making of the decision in relation to these grounds of appeal.

In relation to light, the plot closest to the Appellant's property lies to the north, includes a 60 metre setback and would be comprised of light, crowned native tree species. The plots to the south are some 175 metres away. The FAC does not consider, having regard to the nature, design and location of the

¹ <https://www.gov.ie/en/publication/a6130-bovine-tb-eradication-strategy-2021-2030/>

proposal, that there is any reason to believe that the proposal would significantly impact on light levels in the Appellant's dwelling.

A power line corridor is identified on the amended application maps and is required to be included in the proposal. The FAC is satisfied that this matter was addressed in the processing of the application.

In relation to drinking water, the FAC does not consider that there is any evidence that the proposal would have a negative effect on drinking water. However, a number of submissions made on the application refer to a watermain crossing the lands. From the description it may be that this is situated in the aquatic setback but the DAFM in their statement submitted that this could be addressed when the data is available. It is not clear from the appeal whether the Appellant is claiming that the water supply is privately managed or one controlled by the local authority or Irish Water. The DAFM submit that there is no record of such a watermain on the data provided by Irish Water and the application was referred to the County Council which did not respond. The FAC considers that these claims should have been sent to the Applicant to address and identify if possible, or the person making the submission could have been asked for clarity on the matter and, in the absence of information, a specific query could have been sent to the County Council and/or Irish Water depending on the nature of the infrastructure.

In relation to water quality more generally, the grounds contend that a river in the area has been closed for fishing and that the proposal could have a negative effect on water quality. The proposal is for the afforestation of agricultural land at a small field scale. The plot that borders a watercourse, the Bellananaminnan River, (plot 4) is 0.64 hectares in size and separated from the other plots by the unplanted power line corridor. Plot 4 would be separated from the watercourse by a 15 metre setback and broadleaf planting. This forms part of the Glencullen (North Mayo) 10 waterbody which has been assigned a good status and to be not at risk in relation to the Water Framework Directive. The Ballinglen river lies to the east and forms part of the Ballinglen 20 waterbody which has been assigned a moderate status. While the risk status is under review, previous pressures on this waterbody included urban wastewater, hydromorphology and agriculture. There are watercourses marked to the east of the plots but operations would be excluded from these areas due to the road setback required from the public road. The proposal is for the conversion of agricultural land to forestry on a small scale with ground preparation including mounding without additional drainage, no use of chemical fertilizers or herbicides and the inclusion of setbacks. The FAC does not consider that the proposal represents a risk to water quality or would impede the attainment of good water quality status in any waterbody. The FAC is not satisfied that a serious or significant error was made in this matter.

In addition to the screening for Environmental Impact Assessment the FAC considered the screening for Appropriate Assessment under Article 6(3) and the Forestry Regulations 2017. The Appropriate Assessment Screening, in considering other plans and projects in-combination with the proposal, makes the following conclusion,

Furthermore, as set out in the in-combination assessment attached to this AA Screening, as there is no likelihood of the project itself (i.e. individually) having a significant effect on this European Site, there is no potential for it to contribute to any cumulative adverse effects on the site, when considered in-combination with other plans and projects.

It is concluded that there is no likelihood of the proposed Afforestation project CN87630 itself, i.e. individually, having a significant effect on certain European Site(s) and associated Qualifying Interests / Special Conservation Interests and Conservation Objectives, as listed in the main body of this report. In light of that conclusion, there is no potential for the proposed project to contribute to any significant effect on those same European Site(s), when considered in-combination with other plans and project.

The FAC would understand that the consideration of other plans and projects should take place as part of the process to ascertain whether there are likely significant effects arising from the project itself and in-combination with other plans and projects, having regard to the conservation objectives of the European site concerned. As stated on the record, it appears that the incorrect test was employed at the screening stage in that any potential significant effects on a European site from the proposal itself or in-combination with other plans and projects should be considered in deciding whether to proceed to Appropriate Assessment. For this reason the FAC considers that the screening should be undertaken again.

In considering the record of the decision, the FAC reviewed the letter sent by the DAFM to the Applicant dated 25th November 2021 in which the DAFM submit that the application has increased to 3.89 hectares and requires the erection of new site notices and a number of other amendments. This was not raised in the grounds and the FAC noted that the area licenced reflects that of the application. The FAC considered whether to seek clarity on that letter but as the decision is being remitted and the licence area had not changed it concluded that this would not be necessary or efficient. Nonetheless, the DAFM should review this matter and ensure that no alterations that might require the erection of new site notices were made.

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 series of serious and significant errors was made in the making of the decision in this case. The FAC is, thus, setting aside and remitting the decision of the Minister regarding licence CN87630 in accordance with Section 14B of the Agriculture Appeals Act 2001, as amended, to undertake new screenings for Appropriate Assessment and Environmental Impact Assessment and address the matters in this letter before a new decision is made.

Yours sincerely,

Vincent Upton On Behalf of the Forestry Appeals Committee