



11th November 2024

Subject: Appeals FAC 029 and 031/2024 against licence decision CN93639

Dear

I refer to the appeals 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 appeals.

Hearing and Decision

Having regard to the particular circumstances of the appeals, the FAC considered that it was not necessary to conduct an oral hearing in order to properly and fairly determine the appeals. A hearing of appeals FAC 029 and 031/2024 was held remotely by the FAC on 17/10/2024. In attendance:

FAC Members: Mr. Seamus Neely (Chairperson), Mr. Myles Mac Donncadha, and Mr. Vincent Upton.
Secretary to the FAC: Ms. Aedin Doran.

Having regard to the evidence before it, including the record of the decision, the notices 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 CN93639. The reasons for this decision are set out hereunder.

Background

The licence decision relates to the afforestation of 7.48 hectares at Aghnamard, Co Monaghan. The approval also provides for 850m of stock (sheep) fencing. The application is recorded as being submitted on 27/11/2023 and advertised on 06/12/2023.

The application material sets out that the site notice in the format prescribed has been erected at the entrance to the site. The site is said not to be in a Curlew Breeding Buffer, not within an SPA, SAC or NHA, not within one of the top eight Freshwater Pearl Mussel catchments, does not contain organo-mineral soil with a peat depth of less than or equal to 30 cm, does not contain modified fen or modified cutaway raised bog that meets the requirements of the Native Woodland Type, does not contain wetland habitats as listed in the Irish Wetland Types - An Identification Guide and Field Survey Manual (Irish Ramsar Wetlands Committee, 2018), and does not contain an area listed in the Wetland Survey of Ireland.

In relation to water the project area is said not to be within an area designated as being potentially acid sensitive in relation to surface waters, is not greater than 5 ha and wholly or partially within an area identified as being sensitive for fisheries, is not within a Zone of Contribution, Source Protection Area or 250 m buffer for a drinking water abstraction point, is not within a High Status Objective Waterbody, and is not in the subbasin of a waterbody where forestry is characterised as a pressure by the EPA (alone or alongside other pressures). The site is said to be within or immediately upstream of the subbasin of a River Waterbody deemed 'At Risk' or subject to Review under the relevant River Basin Management Plan and is within or immediately upstream of the subbasin of a River Waterbody, the status of which has been classed as 'Bad' or 'Moderate' under the current River Basin Management Plan. It is stated not to be within or immediately upstream of a Lake Waterbody deemed 'At Risk' or subject to Review under the relevant River Basin Management Plan nor within or immediately upstream of a Lake Waterbody, the status of which has been classed as 'Bad' to 'Moderate' under the relevant River Basin Management Plan.

The project area is said not to be wholly or partially within the foraging range of a Special Conservation Interest of a SPA, as per the Bird Foraging Table, nor is the project area wholly or partially within the Bird Watch Ireland (BWI) Breeding Wader Hotspot map. The project area is said not to be wholly or partially within the Current Distribution and Breeding Distribution for Hen Harrier, as recorded in the current NPWS Article 12 Report. The project area is not within a HNVf area with a score of 0.5 SD or greater, does not overlap with the Irish Semi-Natural Grasslands Survey layer, and does not contain Annex I habitat(s). The project area is within 200 m of a listed archaeological site or monument but not within or adjoining an Archaeological Area, a Zone of Archaeological Amenity, a World Heritage Site, a site on the Tentative List of World Heritage Sites, or a historic battlefield, does not contain or adjoin a Protected Structure or a building or structure in the National Inventory of Architectural Heritage.

The land is described as having a mineral soil, is agricultural land which is not exposed and having a Grass, Grass / Rush vegetation type. It said to have a South aspect. Site access is described as adequate. There is an electricity line running north south at (and within) the western edge of the project area. The preapproval submission shows the proposed planting as Sitka spruce (80%) and the balance as Additional Broadleaves. The application includes Biodiversity Mapping, a fencing map, a location map and operational details in the form of the applicant's preapproval submission report. The Biodiversity map shows the public road, hedgerows, utilized building, watercourse, an aquatic zone, the location of a 38KV electricity line, water setbacks, and the location of the site notices. Plot numbers / boundaries are also shown on the mapping. The proposal includes 850 metres of stock (sheep) fencing. There is also a current environment and habitats map on file dated as completed 27/11/2023.

Fertilizer is to be applied and the application records that the ground preparation would include manual herbicide control in years 1 – 3 and slit planting would be used. Drainage is proposed and no firebreaks are included. The application was not referred to any referral bodies and was field assessed on 27/02/2024.

Appropriate Assessment Screening

The (Inspectors) AA screening report which bears a date of 28/02/2024 identified two European sites within 15km (Kilroosky Lough Cluster SAC 001786 and Lough Oughter And Associated Loughs SAC 000007). Both sites are screened out and reasons for the conclusion reached are set out.

In-Combination Assessment

The In-combination report for the project does not have a date on it and is marked as being an Appendix A to the Appropriate Assessment Screening Report. The Statement in the In-Combination Report has the following wording:

'It is concluded that there is no likelihood of the proposed Afforestation project CN93639, when considered individually, having a significant effect on the relevant European Site(s), as described elsewhere in the Screening Report. There is no likelihood of residual effects that might arise from this project, which are not significant in themselves, creating a significant effect in-combination with other plans and projects. The relevant Qualifying Interests / Special Conservation Interests and Conservation Objectives, as listed elsewhere in the Screening Report, have been taken into consideration in reaching these conclusions'.

Assessment to Determine EIA Requirement

The DAFM carried out an Assessment to Determine EIA Requirement based on an inspection certified on 28/02/2024 which was in advance of making the decision to grant the licence subject of appeal. In this assessment the Inspector recorded a consideration of the application across a range of criteria relevant to the proposed afforestation, including water, soil, terrain, slope, designated areas, HNVf, landscape, amenity and recreation, transfrontier, and cumulative effects, and determined that the project was not required to undergo EIA. The assessment includes that the amount and type of forest cover in this locality is known to be a significant issue however the inspector states that the forest cover within the townland and within 5km is very low and has not significantly changed during the past 5 years.

Archaeology

The application was referred to archaeology (DAFM) and a report is on file setting out conditions for inclusion in the decision.

Submissions

Two submissions are recorded as having been received during the application processing period one on the 03/01/2024 and another on the 05/01/2024.

Licence

The decision to approve the licence application is dated 04/03/2024 and issued subject to a number of standard type conditions and also included conditions relating to archaeology.

Appeals

There are two third party appeals against the decision and the full grounds of appeal and submissions received by the FAC have been provided to the relevant parties. The DAFM informed the FAC that the

documents required under the Forestry Appeals Committee Regulations 2020 are provided through the Forestry Licence Viewer and the parties were notified of this.

In summary, the grounds of appeal FAC 029/2024 include;

- Submission that family home will be beside the forest impacting light and sunlight,
- References getting PV panels soon and submits that forest will reduce energy to panels,
- Submits that a digger was on site removing trees and hedges and encloses pictures,
- Submits that works has started in contravention of 14 day stay on works,
- Submits a picture of frog spawn and submits that it is within the hedgerow being removed.

In summary, the grounds of appeal FAC 031/2024 include;

- Submission that permission should be refused as several poultry farms are nearby and contends that forestry will bring foxes, badgers and pine martin and will lead to bird flu,
- Includes that if there is an outbreak of bird flu their objections will be 'explained' and DAFM held to account.

DAFM Statement (SOF)

A separate response was provided on behalf of the Minister for Agriculture, Food and the Marine for each appeal. These SOF outlines the procedure adopted by the DAFM in processing the application, the related dates and the final decision. It is submitted that the decision was issued in accordance with DAFM procedures, SI 191/2017 and the 2014 Forestry Act. The statements submits that there were no referrals, that that the proposal was field assessed, and that there were two submissions made.

The SOF for FAC 029/2024 includes by way of response to the grounds as below:

'I have read and considered the Appellants Grounds of Appeal. The text below is my response to the issues raised in the Grounds of Appeal.

Light – The Appellant is concerned about the reduction of light as a consequence of the afforestation. There will be no trees planted within 60m of any dwelling and a further 20m of small and narrow crowned broadleaf trees will be planted between conifers and dwelling setback. The proposed afforestation lies to the east of a dwelling and with the proposed set backs and broadleaf planting no significant reduction in light is anticipated.

Views – The proposed afforestation lies to the east of a dwelling with views of the countryside to the North, West and south unchanged. The location of the proposed afforestation is situated to the rear of the dwelling.

Trees and hedgerow – The Appellant has stated that hedges and trees had been removed. On the day of my field visit, 27th February 2024, I noted that an excavator had been on site and had been trimming back hedges, levelling disturbed ground and creating/widening a gap between two fields. One dead ash tree,

adjacent to gap/road, had been felled (prior to Approval and associated conditions). I did not see any hedges that had been removed and only the one aforementioned Ash tree which had been felled.

Flora and Fauna – The Appellant is concerned about the impact of the proposed afforestation on the flora and fauna in the area. The area which has been proposed for afforestation has been assessed for any potential impact to protected habitats and species. This has been addressed by creating habitat and biodiversity maps, carrying out an Appropriate Assessment and checking the numerous data sets on IFORIS for any potential impact on Ecology and the local environment. The suite of Forestry Guidelines and Approval conditions will be adhered to and will enhance the biodiversity value of the proposed afforestation project.'

The SOF for FAC 031/2024 includes by way of response to the grounds as below:

'I have read and considered the Appellants Grounds of Appeal. The text below is my response to the issues raised in the Grounds of Appeal.

The appellant has raised concerns about the effect of the proposed tree planting on poultry farms. One of the many benefits and aims of afforestation is to enhance the biodiversity of flora and fauna in the environment. Many poultry farmers, in the Cavan and Monaghan area, are choosing to plant trees in and around their poultry sheds to offer shelter for the chickens. This tree planting activity around poultry farms has also been endorsed by companies buying poultry products.

The proposed afforestation project is not expected to have any significant effect on poultry farms.'

Post appeal Submission

There is a post appeal submission from the applicant relating to FAC 029/2024 as below and which contains copies of supporting receipts and photos:

'Date: 31/03/2024 - Appeal Reply

Dear Team,

Thank you for your communication regarding the appeal for CN93639. Please allow me to reply to : ground for appeal. On the 19th to 21st February a digger was onsite to clean around the sides of hedges. Hedges were coppiced down to between 2-3 metres and then the remaining debris was then mulched. Absolutely no trees or hedge rows were removed.

The work was carried out before the 29th February. Gates were hung and gate-ways were stoned. This work was not part of any forestry works. It had commenced before the approval date of 04/03/2024. This was work which any Farmer is permitted to do before the hedge cutting season finishes at the end of February. Please feel free to inspect the site to verify my claims. No forestry work has commenced at the site'.

Considerations of the Forestry Appeals Committee

The FAC, in the first instance considered if the procedures leading to the making of the decision to grant the licence for the proposed development were consistent with the EIA and Habitats 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 7.48 ha and is sub-threshold for the mandatory submission of an EIA report. 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 relation to Appropriate Assessment the FAC finds that the DAFM undertook a screening which bears a date of 28/02/2024 that identified two European sites within 15km (Kilroosky Lough Cluster SAC 001786 and Lough Oughter And Associated Loughs SAC 000007). The FAC further finds that both sites are screened out and reasons for the conclusion reached are set out in the report. In relation to Lough Oughter And Associated Loughs SAC 000007 the FAC finds that the reasons recorded for screening out the European Site included that the project area is 'downstream from the Natura site', the subsequent lack of any hydrological connection and the 'absence of any aquatic zone within or adjoining the project area'. From an examination of publicly available information on the catchments.ie website the FAC finds that the project area is in fact upstream of the Lough Oughter And Associated Loughs SAC 000007. The screening also records that the project area does not adjoin or contain an aquatic zone and this is further stated as part of the reasoning of the decision. The Biomap and Habitat Map submitted with the application mark an aquatic zone / watercourse to the southeast of the lands and the Biomap includes a related setback. The FAC considers that this represents a serious error in the processing of the application as it relates to Appropriate Assessment.

The FAC also finds that the In-combination assessment report for the project which is marked as being an Appendix A to the screening report includes the following wording.

'It is concluded that there is no likelihood of the proposed Afforestation project CN93639, when considered individually, having a significant effect on the relevant European Site(s), as described elsewhere in the Screening Report. There is no likelihood of residual effects that might arise from this project, which are not significant in themselves, creating a significant effect in-combination with other plans and projects. The relevant Qualifying Interests / Special Conservation Interests and Conservation Objectives, as listed elsewhere in the Screening Report, have been taken into consideration in reaching these conclusions'.

In relation to In-Combination assessment the FAC would understand that the consideration of other plans and projects should take place as part of the process to ascertain whether the project, either individually

or in-combination with other plans or projects, is likely to have a significant effect on a European site and an Appropriate Assessment of the implications of the project and such effects on the European site, having regard to the conservation objectives of the site concerned. It appears to the FAC that it is not clear that the wording in the In-combination statement relating to the screened out sites demonstrates that the potential for significant effects to arise from the proposal in-combination with other plans and projects was considered by the DAFM as the wording refers to consideration on the basis that there is no likelihood of 'residual effect(s)' that might arise, which are not significant in themselves, creating a significant effect in combination with other plans and projects.

In the FAC's view, the reference to 'residual effects' in the In-Combination report / assessment on file creates confusion as it is not clear what effects are being referred to in this instance and there is no explanation as to what gives rise to these effects such that they can be described as being 'residual'. The FAC would understand that the term residual is generally used in the context of what remains after an action is undertaken. In the context of Appropriate Assessment (AA) the term 'residual effects' is more commonly employed in relation to the consideration of what effects remain after mitigation measures have been assessed as part of the AA. For example, the Department of the Environment, Heritage and Local Government has published a guidance document on Appropriate Assessment entitled Appropriate Assessment of Plans and Projects in Ireland Guidance for Planning Authorities (DEHLG, 2009). This document states on page 40,

'If the competent authority considers that residual adverse effects remain, then the plan or project may not proceed without continuing to stage 3 of the AA process: Alternative Solutions'.

In the context of undertaking the screening again the FAC considers that the Minister should correct this language to avoid the introduction of any unnecessary confusion.

In relation to the potential impacts on the family home of appellant FAC029/2024, and impacts on the efficacy of future solar panels, the FAC noted that the location of the dwelling house to the west of the proposal lands and the inclusion of a 60 metre unplanted setback from dwellings proposed and included as a condition of the licence through adherence with the Environmental Requirements for Afforestation. The FAC further noted that the file evidences that the submissions made during the application process were considered by the DAFM in the making of the decision. The lands in question are described as enclosed agricultural land. The FAC understands its remit to be the determination of appeals against decisions made under the Forestry Act 2014 and the Forestry Regulations 2017 and that it would not make determinations in relation to civil matters. The Environmental Requirements for Afforestation requires adherence with an unplanted setback of 60 metres unless written agreement is attained from dwelling owners. In this case a 60 metre setback was proposed and conditioned and the Minister had regard to the submissions made on the licence application. The FAC considers that such a setback is in keeping with published policies and procedures and sufficient to avoid any significant impacts related to proximity to dwellings. In these circumstances, the FAC concluded that there was no convincing evidence before it that a significant or serious error was made in the making of the decision by the Minister to grant the licence

for the proposed development as it relates to these grounds of appeal including in relation to potential impact on the dwelling concerned.

In relation to the submission in the grounds of appeal that works had started in contravention of 14 day stay on works the FAC considered the response of the DAFM in its SOF to the FAC and the response received from the applicant in this connection. The FAC is not an enforcement authority. Notwithstanding that this element of the grounds as submitted are outside the remit of FAC as it appears to relate to the post decision period, the FAC concluded that there was no convincing evidence before it that a significant or serious error was made in the making of the decision by the Minister to grant the licence for the proposed development as it relates to these grounds of appeal.

In relation to the grounds which submit that that permission should be refused as there are several poultry farms nearby and references that forestry will bring foxes, badgers and pine martin and will lead to bird flu and that if there is an outbreak of bird flu the DAFM will held to account, the FAC noted the submission in the DAFM SOF wherein it states;

'The appellant has raised concerns about the effect of the proposed tree planting on poultry farms.

One of the many benefits and aims of afforestation is to enhance the biodiversity of flora and fauna in the environment. Many poultry farmers, in the Cavan and Monaghan area, are choosing to plant trees in and around their poultry sheds to offer shelter for the chickens. This tree planting activity around poultry farms has also been endorsed by companies buying poultry products.

The proposed afforestation project is not expected to have any significant effect on poultry farms'.

The FAC would understand that the DAFM has policies in relation to the management of certain pests and diseases and that these would not require the refusal of the application. As previously noted the FAC would not understand its role to settling civil matters. In these circumstances, the FAC concluded that there was no convincing evidence before it that a significant or serious error was made in the making of the decision by the Minister to grant the licence for the proposed development as it relates to these grounds of appeal.

The FAC finds that the project in this case is situated within the River Sub-Basins Finn (Monaghan)_040 and the River Sub-Basins Finn (Monaghan)_050. The Status of the Finn (Monaghan)_040 is moderate based on monitoring, and it is recorded as being at Risk. The Status of the Finn (Monaghan)_050 is poor moderate based on monitoring, and it is recorded as being at Risk. The FAC considers that the proposal is of a relatively small scale and involves planting on agricultural land with limited operations and inputs as recorded. The FAC notes that the file record appears to confuse the location of the proposal as being downstream of the Lough Oughter And Associated Loughs SAC 000007) whereas (and as alluded to earlier in this letter) the public record on catchments.ie shows it as being upstream of the said SAC and the DAFM contradicts the application mapping in relation to the presence of a watercourse adjoining the lands. In light of this confusion the FAC considers that the DAFM should make a fresh assessment of the proposal

and clearly state whether it considers that the proposal would threaten the objectives of the Water Framework Directive.

In considering the appeals, 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 the making of the decision in this case. The FAC is, thus, setting aside and remitting the decision of the Minister regarding licence CN93639 in accordance with Section 14B of the Agriculture Appeals Act 2001, as amended, to undertake a new Appropriate Assessment screening of the proposal itself and in combination with other plans or projects under Article 6(3) of the EU Habitats Directive, and to address other matters raised in this letter, before a new decision is made.

Yours sincerely,

Seamus Neely, On Behalf of the Forestry Appeals Committee

