



06/01/2025

Subject: Appeal FAC017/2024 in relation to afforestation licence CN87712

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 14 A(1) of the Agriculture Appeals Act 2001, has now completed an examination of the facts and evidence provided by all parties to the appeal.

Hearing & Decision

The FAC considered appeal FAC017/2024 during a sitting of the FAC on the 17/10/2024. In attendance:
FAC Members – Mr. Seamus Neely (Chairperson), Mr. Vincent Upton & Mr. Myles Mac Donncadha
FAC Secretary – Ms. Aedín Doran

The FAC considered all of the documentation on the file, including application details, processing of the application by the Department of Agriculture, Food, and the Marine (DAFM), the grounds of appeal, and all other submissions, before deciding to affirm the Minister's decision to grant CN87712.

Background

The licence under appeal was issued by the DAFM on 25/01/2024 and is for the afforestation of 4.23ha in Knock, Glenaknockane, Co. Cork. The proposed development consists of three plots: Plot 1 is 2.77ha of Sitka spruce (85%) & ADB (15%). Plot 3 (0.52ha) and Plot 4 (0.95ha) are both Native Woodland Establishment (NWE) plots.

Site Details

The *Site Details Report* on the DAFM's Forestry Licence Viewer (FLV) states the soils on-site are mineral soils, the site is "not exposed" with an easterly/neutral aspect. Ordnance Survey Ireland's Geohive Map Viewer indicates the elevation is c.270m for plots 3 & 4 rising to c.310m for Plot 1. The proposal is on enclosed land, has existing vegetation cover of grass, grass/rush, and there is "adequate site access".

The proposal is located along the R579 in the Boggeragh Mountains, c.16km south-west of Mallow, Co. Cork. Plot 1 is west of the R579 and is bound to the west and south by existing Coillte-owned mature coniferous forest. Plot 1 is located across the R579 from a house and includes a "Dwellings & other utilised buildings" setback. Plots 3 & 4 are c.260m to the north of Plot 1 and lie to the east of the R579. A 10-20Kv power line runs north to south between plots 3 & 4. Adjoining plots 3 & 4 to the north is a 16.52ha NWE site which was approved in January 2021 and is now 'Planted' as per the FLV. The proposal is in the Blackwater[Munster]_SC_070 Sub-Catchment and the Glen (Banteer)_010 River Sub-Basin. The Glen

(Banteer)_010 is a High-Status Objective waterbody which currently has a 'High' water quality status and deemed to be 'Not at Risk' under the WFD Cycle 2 assessment. As per the Bio Map, a watercourse runs along the eastern boundary of Plot 4. The Environmental Protection Agency (EPA) online map lists this as an order 1 stream named Glenaknockane. This stream flows roughly north for c.500m before joining the Glen [Banteer], which forms part of the Blackwater River (Cork/Waterford) SAC. This SAC is c.1.8km downstream from Plot 4 and is within the Munster Blackwater Margaritifera SAC Catchment. The Ground waterbody underlying the proposal is the Glenville IE_SW_G_037 which was assigned 'Good' status under the GW 2013-2018 assessment period and its WFD risk status is under review.

Operational Details

Appendix A of the Approval Letter lists the operational details. The Appropriate Assessment (AA) Screening Report provides additional information regarding which plots will receive drainage/fertiliser:

- Drainage is required in Plot 1 but not in Plots 3 & 4. No firebreaks are required.
- Ground Rock Phosphate is to be applied at 250kg/ha in Plot 1 only.
- Ground Preparation is woody weed removal and mounding. Mound drains will be created in Plot 1 with inverted scrap mounding only in plots 3 & 4.
- Manual weed control will be used alongside herbicide application in Yr0 – Yr3.

DAFM AA Process

The FLV contains an AA Screening Report & Determination, dated 14/02/2022, prepared by a DAFM Ecologist. The proposed project is described, and the soils on-site are described as predominantly podzols in nature. The slope is predominantly flat to moderate (<15%) and the project area is crossed by / adjoins an aquatic zone(s). The vegetation type(s) within the project area comprise grassland. Two European sites within 15km of the proposal were screened for AA with the following findings recorded.

Mullaghanish to Musheramore Mountains SPA was screened out due to the separation distance of 9.1 km which is outside the core foraging range for the Qualifying Interests (QIs), Hen Harrier, and the unsuitability of the habitats within the project area.

Blackwater River (Cork-Waterford) SAC was screened in according to the findings of due to "Possible effect due to hydrological connectivity between project and the European Site. The project is located ca. 1.9km upstream of the European Site".

Following this AA Screening Report & Determination an AA Report was completed (dated 14/02/2022) and the AA Determination (dated 25/03/2022) recorded that the project proposed, individually or in combination with other plans or projects, would not adversely affect the integrity of the Blackwater River (Cork/Waterford) SAC.

In addressing the grounds for remittal of the first decision in relation to CN87712, DAFM completed a new AA Screening Report (dated 25/01/2024) that, taking on board the AA Determination from 25/03/2022, screened out the Blackwater River (Cork-Waterford) SAC on the basis that this Natura site "is now functionally screened out in order to progress the file in iFORIS for Approval with Conditions or Refusal, as set out in the internal e-mail 22 April 2020." A new in-combination report states that there is no likelihood that the proposed project will have, or contribute to, any significant effect on those same European Site(s), when considered in combination with other plans and projects.

DAFM Assessment to Determine EIA Requirement

The DAFM completed an Assessment to Determine EIA Requirement, dated 25/01/2024, which considered the proposal's potential impact on the environment across a range of criteria before concluding that the application should not be subject to the EIA process.

Referrals

The DAFM referred the application to the South-Western Regional Fisheries Board/Inland Fisheries Ireland (IFI), the National Parks & Wildlife Service (NPWS), and Cork County Council. The fisheries authority responded that it had no objection to the proposal provided they comply with good practice measures and requested broadleaf planting adjacent to the watercourse. No replies were received from the other bodies.

The application was also considered by a DAFM Archaeologist who prepared a report and recommended specific conditions which were subsequently included in the licence.

Licence

The approval letter was issued on the 25/01/2024 and conditions 1-4 are relatively standard. Condition 5 requires compliance with the following;

- i) All existing trees and hedgerows within the site shall be retained,
- ii) The Environmental Requirements for Afforestation and the Forestry Standards Manual,
- iii) The specific conditions outlined in the attached AA Determination (dated 25/03/2022),
- iv) The specific conditions in the attached archaeological report (dated 11/01/2021) and listed as a condition.

Grounds of Appeal

There is one appeal against the licence (FAC017/2024). The grounds of appeal were considered in full by the FAC and the following is a summary of the issues raised:

1. The licence condition to retain all existing trees and hedgerows contradicts the recommendation of Cork County Council roads engineer to maintain the hedgerows as they may pose a safety hazard
2. The non-native hedgerow trees do not merit protection, do not contribute to wildlife, diminish sunlight to the home and solar system of the adjacent house, diminishing its value; and should not be retained
3. The proposed afforestation is located at a higher level to a bored well and may contaminate it.
4. The required site notice was not displayed in the correct location

DAFM Response

The DAFM provided a written response dated 13/03/2024 to the grounds of appeal in the form of a Statement of Facts to the FAC. The DAFM Administration response states that "the decision was issued in accordance with our procedures, S.I 191/2017 and the 2014 Forestry Act." The District Inspector addresses each of the numbered grounds of appeal as follows:

1. The Forestry Act, 2014 states at section 19(1)(F) that a tree that is, in the opinion of the planning authority, dangerous on account of its age, condition or location shall be an exempted tree i.e. these trees are exempted for the need to obtain a felling licence. Dangerous trees are the legal remit of the local authority and conditions on an afforestation licence have no bearing on this jurisdiction.
2. There is a 60m setback from the dwelling house and in any case the public road hedgerow trees in the vicinity of the dwelling house are not within this site boundary.
3. The issue of well contamination has already been addressed in the previous appeal and should be disallowed as grounds in this one.
4. The site notice was in place when I carried out my inspection.

Submission

There is one submission dated 16/04/2024 sent from the appellant in response to the Statement from Inspectorate dated 13/03/2024 that was shared as part of FAC procedures. The issues covered therein

largely reflect the grounds of appeal (and responses from the Inspectorate to each of the numbered grounds of appeal):

1. That the addition of a condition to the afforestation licence requiring the retention of hedgerows contradicts the inspectors assertion that conditions on an afforestation licence have no bearing on the jurisdiction of the local authority with respect to dangerous trees.
2. "The setback from the road is included in the afforestation licence due to fact of previous pollution, therefore in the site boundary. The site boundary requirement is due to the reasons of the dwelling well opposite the planned site, therefore in the vicinity."
3. That the issue of the well has not been addressed in full.
4. That the site notice was not placed in the vicinity of the planned afforestation.

The submission was accompanied by a letter addressed to the Appellant from the County Council which included concerns regarding roadside trees.

FAC Considerations

DAFM Processing of Application

The FAC considered the DAFM's processing of the application prior to the DAFM decision to issue afforestation licence CN87712. A decision of the FAC regarding a previous appeal relating to this application remitted the decision to the DAFM to carry out and record a new assessment to determine the requirement for EIA and a new assessment of the proposal's potential to contribute to a cumulative adverse effect on the Blackwater River (Cork-Waterford) SAC in combination with other plans and projects. The FAC also considered that the DAFM should require an updated biomap to be submitted by the applicant, indicating the 30m setbacks related to bored wells.

In issuing a new decision (the subject of this appeal), all these issues were addressed by the DAFM in that: a new assessment to determine the requirement for EIA was undertaken wherein the approximate percentage of forest cover in the sub-basin was the same as in the in-combination statement; the amount of forest cover in the locality was recognised as being a significant issue and a mitigation response was entered; and a new biomap (dated 08/02/2023) was submitted with all wells clearly shown. For the new decision DAFM compiled a new Appropriate Assessment Screening Report which, using the evidence from the AA Report and AA Determination from the first decision, screened both Natura Sites out. The new Appropriate Assessment Screening Report included an in-combination assessment that found no likelihood of the project having any significant effect, either individually or in combination with other plans and projects. Given that there are no material differences to the latest application, that the percentage of forest cover as used in the in-combination assessment is consistent across all sources; and that no new information has come to light in the intervening period, the FAC considers it reasonable that the DAFM used the results of the AA Screening, AA Screening Determination, AA Report and AA Determination from the first application in its Appropriate Assessment Screening Report for this application. The DAFM outlined that this was their approach in their Statement of Fact responding to this appeal. In particular, they stated that the Appropriate Assessment Determination (AAD) of 25/03/2022 by a DAFM Ecologist was employed. Adherence with the measures of the AAD are conditioned in the licence issued on 25/01/2024.

FAC Consideration of the Grounds of Appeal

Retention of existing trees and hedgerows

The appellant contends that the landowner's hedgerows need maintenance as they are a danger to road users. As in the first appeal, the FAC noted that the Roads Act 1993 requires owners or occupiers of land to take all reasonable steps to ensure that trees or other vegetation on their land are not a hazard to persons using a public road, whether or not these trees are the subject of a retention condition in any

licence issued by the DAFM. The issuing of an afforestation licence by the DAFM does not remove or negate any other statutory requirement incumbent upon the applicant. Furthermore, the licence and conditions relate to the specific afforestation application that was submitted. The retention of hedgerows and trees in undertaking the afforestation operations is not inconsistent with trimming or maintenance of hedgerows and trees to safeguard public safety. The licence includes conditions that preclude tree planting within a setback from the public road, in addition to dwellings, which are standard conditions and included in best practice documents including the Forestry Standards Manual and the Environmental Requirements for Afforestation. The FAC does not consider that the DAFM made an error in its processing of the application in relation to the treatment of hedgerows.

Hedgerows and setbacks

The issue of setbacks was dealt with extensively during the first appeal. Regarding the exclusion of new trees, the FAC considers that the 60m afforestation setbacks from dwellings is adequate. Existing hedgerows are to be retained as a condition of the licence approval, as set out in the Mitigation Measures contained in the Appropriate Assessment Determination. Additionally, hedges are subject to the Roads Act 1993 and the Wildlife Act 1976. The FAC does not consider that the DAFM made an error in its processing of the application in relation to the setbacks and associated hedgerows.

Wells and pollution

Setbacks from wells and the risk of contamination was dealt with extensively in the previous FAC decision. The FAC does not consider that the grounds provide a basis by which it might be concluded that the proposal could have a significant impact on a well or water quality. The proposal is for the establishment of forest on agricultural land. The FAC reviewed the Bio Map on the FLV which shows a 60m dwelling setback which will be bounded by 10m of broadleaf planting. The FAC considered that, given the location of the private household well indicated in the appellant's annotated map, the effective setback between the first row of planted (broadleaf) trees and the private household well is approximately 70m. The FAC considered that this is more than the minimum setback of 30m required by the FSM and as such did not consider that the DAFM made an error in its processing of the application regarding setback distance from the private household well. A setback of 30 metres from a farm well is also included in the biomap. In the interest of clarity and to inform the works proposed by the applicant, the applicant provided a new biomap for the licence record that indicates the well locations as furnished by the appellant, and the afforestation setbacks that will apply.

Site notice

As per S.I 191 of 2017 all site notices are to be placed at the entrance to the land to which the licence relates. The biomap indicates these locations, including the access to the two blocks which form this application and the Inspector states that the site notices were in place at the time of his inspection. The FAC considers that the site notices were erected in keeping with the requirements of the forestry legislation. The FAC does not consider that the DAFM made an error in its processing of the application in relation to the applicants site notice obligations.

Conclusion

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal, additional submissions 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 not satisfied that a 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 CN87712 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,

Myles Mac Donnadha on Behalf of the Forestry Appeals Committee



An Coiste um Achomhairc

Foraoinseachta

Forestry Appeals Committee

Kilminchy Court, Fortlaoise, Co Laois, R32 DTW5

Eon/Telephone 076 106 4418

057 863 1900