



[Redacted]

20 April 2021

**Subject:** Appeals FAC 240/2019, 256/2019, 257/2019, 258/2019, 259/2019, 264/2019, 265/2019, 266/2019, 267/2019, 268/2019, 269/2019, 270/2019, 271/2019, 272/2019, 273/2019, 274/2019, & 276/2019 in relation to licence CN83176

Dear [Redacted]

I refer to the appeals to the Forestry Appeals Committee (FAC) against the decision by the Minister for Agriculture, Food and Marine in respect of licence CN83176.

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 the parties to the appeals.

**Background**

Licence CN83176 for afforestation of 26.7 hectares (ha) at Crovraghan, Co. Clare was granted by the Department of Agriculture, Food and the Marine (DAFM) on 4<sup>th</sup> September 2019.

**Hearing**

An oral hearing of appeals FAC 240/2019, 256/2019, 257/2019, 258/2019, 259/2019, 264/2019, 265/2019, 266/2019, 267/2019, 268/2019, 269/2019, 270/2019, 271/2019, 272/2019, 273/2019, 274/2019, & 276/2019, of which all parties were notified, was held by a division of the FAC on 8<sup>th</sup> March 2021. In attendance:

FAC Members: Mr. Myles Mac Donncadha (Chairperson), Mr. James Conway, Mr. Seamus Neely & Mr. Derek Daly

Appellants: [Redacted]

Appellants' Representative(s): [Redacted]

Applicant / Representative(s): [Redacted]

Department Representative(s): Mr. Kevin Keary, Mr. Emmet Byrnes & Ms. Mary Coogan  
Secretary to the FAC: Ms. Emma Guerin & Ms Heather Goodwin (Observer)

**Decision**

The Forestry Appeals Committee considered all of the documentation on the file, including application details, processing of the application by DAFM, the notice of appeals, and submissions at oral hearing, before deciding to set aside and remit the decision of the Minister to grant this licence (Reference CN83176).

The licence decision pertains to afforestation of 26.7 ha at Crovraghan, Co.Clare under GPC 3, 4, 6, 8 & 9, comprising 11 plots. Plots 1 – 9 are south of the public road. Plots 10 & 11 are north of the public road. Plot 1 is the largest plot at 21.41ha with Sitka Spruce (85%) and Additional Broadleaves (15%). The



biomap supplied by the applicant identifies a watercourse adjoining the north west boundary of the site. The site is located within the Shannon Estuary North WFD catchment and Killadysertstream \_010 river sub basin.

The land is described in the Appropriate Assessment screening as having an underlying soil type which is mainly free draining brown earth and brown podzolics with a high proportion of stone, the slope as mainly flat to moderate (<15%) in the southern half and moderately steep on the northern half. It is stated that the project area does not adjoin an aquatic zone, that there are no field drains along headlands, the site is self contained and that the vegetation type within the proposal area is grass with some briar in the hedgerows.

The application was desk and field assessed by DAFM and referred to Clare County Council and An Taisce. No response is recorded from Clare County Council on file while An Taisce responded stating Appropriate Assessment was required for Lower River Shannon SAC and River Shannon and River Fergus SPA and raising concerns regarding the level of Areas for Biodiversity Enhancement. The proposal was also referred internally within DAFM for review by an archaeologist, who identified one Recorded Monument, an earthwork (CL060-004), and other features that prompted the proposal of additional conditions.

The DAFM recorded an Appropriate Assessment screening on 13 August 2019, identified two sites, Lower River Shannon SAC and River Shannon and River Fergus SPA, within 3km and screened both out for Appropriate Assessment. The DAFM also recorded consideration of the environmental effects of the proposal across a range of criteria and determined that the project was not required to undergo the EIA process. The DAFM approved the application on 4<sup>th</sup> September 2019 with standard conditions, specific archaeological conditions and the following environmental and silvicultural conditions:

- *Plant in accordance with the amended map and open spaces for archaeology. Install at least 3m hedgerow dripline setbacks;*
- *No issues pertaining to water or aquatic zones on this well drained site, mound drains are not required on the vast majority of this site;*
- *Plot 6 is changed to Oak. Plant the 15% Broadleaved requirement for GPC3 in small clumps along hedgerows and along the southern boundary;*
- *Adhere to forestry biodiversity guidelines.*

There are seventeen appeals against the decision, one other appeal was withdrawn prior to oral hearing. Broadly the grounds of the appeals submitted are as follows;

- FAC 240/2019 includes grounds under deleterious effect on property, need for Appropriate Assessment, site suitability concerns and impact on the visual amenity and landscape.
- FAC 256/2019 includes removal of view of the river from residence, need trees but also need scenic routes and this is on the Shannon Estuary Way of Wild Atlantic Way, and property will depreciate in value.
- FAC 257/2019 includes the area is of important tourist significance, a forest in this area will completely block off views of the estuary and the islands which have a huge heritage to offer our tourists, St Breckan's Holy well is situated adjacent to the boundary wall for this proposed area of the forest, visitors to the area will not welcome this intrusion in this serene and prayerful setting which has drawn pilgrims for cures to the eyes for generations, Shannon Estuary Way have chosen a site overlooking this land to view the islands and it is hoped to be developed as a tourist view spot and car/ bus parking area by Clare County Council in the very near future, and that a lot of chemical contamination will arise from the planting of forest and the run off of chemicals entering the river on the estuary, particularly as the stream that runs through this land has been flooded in severe high tide.
- FAC 258/2019, 259/2019, 265/2019, 267/2019, 268/2019, 269/2019, 270/2019 and 271/2019 include grounds under scenic area, environmental impact, archaeological impact, and access via road used by the public for recreation.
- FAC 264/2019 includes grounds under access and egress, Crovraghan in relation to the lands being adjacent to a designated Heritage Landscape and proposed afforestation likely to have a



significant adverse impact on an area of special amenity, environmental impact, environmental professional view regarding EIA and Appropriate Assessment, drainage and chemicals, high winds, natural light and scenic views, noise levels and mental health, documentation having discrepancies/inaccuracies/shortcomings, and monetary impacts.

- FAC 266/2019 includes grounds under views, environmental impact, noise pollution, water quality, economic impact on local community.
- FAC 272/2019 includes grounds under views of the Shannon Estuary and islands, block natural light, affect local wild life including the biodiversity of insects which may be a health and safety issue to residents, water pollution, fire hazard, encroach on existing housing and devaluation of our properties, scenic area, environmental impact, archaeological impact, and access via road used by the public for recreation.
- FAC 273/2019 includes grounds that Crovraghan Pier is near completion which will facilitate tourism and excursion to the islands, visual impact and scenery from the main road R473 disappear, a platform is to be built so visitors could view across the river i.e. Shannon Airport, Limerick and parts of Kerry, negative impact to tourism and local community, scenic area, environmental impact, archaeological impact, and access via road used by the public for recreation.
- FAC 274/2019 includes grounds that the access road leading to said forestry runs along side my house, this road is not suitable for any trucks/ machinery etc.
- FAC 276/2019 includes grounds under access and egress, Crovraghan in relation to the lands being adjacent to a designated Heritage Landscape and proposed afforestation likely to have a significant adverse impact on an area of special amenity, environmental impact, environmental professional view regarding EIA and Appropriate Assessment, drainage and chemicals, high winds, natural light and scenic views, noise levels and mental health, lack of consultation and devaluation of property and restrict ability to sell in the future.

The DAFM statement to the FAC responded to the grounds of appeal stating that the licence application had been processed according to their procedures, SI 191 of 2017 and the Forestry Act 2014, and that all procedures/guidelines were adhered to. The DAFM Forestry Inspector in the statement submitted that the recent changes in our (DAFM) Standard Operating Procedures regarding Appropriate Assessment Screening means that the approval can no longer be justified at this juncture and that a further Appropriate Assessment Screening is required using updated procedures and a possible subsequent request for further information. He expressed satisfaction with all aspects of the proposal, other than that pertaining to the Appropriate Assessment Screening, and rejected the notion that the proposal would have a deleterious effect on the area and its surroundings.

At the oral hearing the DAFM provided an overview of the processing of the application, highlighted that changes were made to the application to incorporate Oak and Douglas Fir into the design, clarified that the Appropriate Assessment used in making the decision was made per the protocol in place at the time (version of November 2018). This was limited to include Natura 2000 sites up to 3km distant from the site and no assessment was made of any in-combination effects of the proposal. The applicant stated they had gone to the expense of getting a Natura Impact Statement (NIS) report prepared and submitted since the licence was issued and the owner of some of the land submitted her rationale for the proposed change in land use.

The appellant in the case of 240/2019 contextualised her submitted grounds of appeal, explaining that their lands adjoin the proposal area, how both fit together in the undulating landscape, and submitted that there were failures in the Appropriate Assessment screening and that she did not accept that all other aspects relating to the proposal with the exception of Appropriate Assessment are okay and will not have a deleterious effect on property. The appellant in the case of 264/2019 stated that two representatives were speaking on his behalf. One of the appellants' representatives submitted that the appellants have set out their grounds extensively and referred to these, and further highlighted having severe reservations regarding access, no proper analysis of future impacts of the proposal, no correct analysis of environmental impact, the Appropriate Assessment screening is fatally flawed, raised concerns regarding drainage and chemicals, that there is hydrological connection to a Natura 2000 site despite what the



DAFM's document states and that human health should be considered under Environmental Impact Assessment. The appellant's other representative took issue with the applicant's indication of a NIS report having been carried out, submitted that the DAFM decision to screen out for Appropriate Assessment was not done on the basis of a robust and accurate assessment, that while the DAFM have accepted issues with the Appropriate Assessment screening, this is only on the basis of procedural necessities rather than fundamental flaws. Other appellants in attendance expressed their satisfaction with others speaking on their behalf and on occasions endorsed what had been submitted.

In response to queries from the FAC, the DAFM Inspector clarified that they agree there is hydrological connection from the proposal area but that mitigation can be used to protect relevant watercourses, explained the request to the applicant for further documentation during the decision making process and to exclude 5 hectares from the site due to soil depth and how this concern was subsequently set aside following the digging of test holes by the applicant and that there was some changes made to the species proposed for aesthetic purposes. The applicant clarified access to the proposal area and the proposed site preparation for planting. The DAFM Archaeologist clarified that the archaeological findings were from a desk-based assessment by a colleague and submitted that the preliminary recommendations were forwarded to the National Monuments Service who replied agreeing to the recommendations therein. It was also submitted that the proposal area is immediately contiguous but not in a designated heritage landscape under the County Development Plan and that there is a location along the R473 that is one of three proposed viewing points along the Shannon Estuary Way from which the proposal area is visible from. The DAFM Inspector referred to the undulating landscape of the area, but that the site was difficult to see from the Estuary and that it is not visible from Crovraghan Pier. He therefore submitted that there would be minimal impact on the landscape but of more importance to the houses along the road and also outlined setback requirements for planting and that there is not a lot of forestry activity in the area.

The appellant in the case of 271/2019 submitted that the view from her house and of others along the R473 would be affected and submitted safety concerns for her family and others walking the public road off the R473 to Crovraghan Pier, that the proposal area is accessed from. Another representative of the appellants expressed support for Ireland achieving its forestry targets but submitted that the environmental assessment in this case was not sufficient and that an Appropriate Assessment was required. One of the previous representatives to speak on behalf of appellant 264/2019 added that there was a breach of the WFD, that the sub river basin was not classified or designated in this case, so requirements of the WFD could not be met. The other representative of appellant 264/2019 further submitted there was no adequate surveys conducted on potential impact on wildlife and raised the foraging distances of the SPA's qualifying interests and of buffering distances from drains under Forest Service Guidelines. A number of the appellants raised concerns regarding the adequacy of the public road to support the traffic associated with the proposal and its impacts, an appellant mentioned the occurrence of a fire in the parish and the challenges for the fire service to travel the road. The presence of bats and wintering birds in the area and the noise impact from the activities associated with the proposal were also submitted. The applicant gave an account of the activity and machinery to be associated with proposal, submitting that there would not be much activity at planting, with a 12-tonne digger used to cultivate the ground; a tractor and post driver would be used for fencing and the personnel planting the site would travel to the site in jeeps while transporting the trees, and submitted a possible three-week period of activity at thinnings with the use of a small thinning machine. He contended that the public road is perfectly good and imagined a stop-go system being imposed as a condition at felling licence application time and that there is ample road width into and on the property and that there is stone on the site as well, precluding the need for haulage of stone onto the site for road making. In response to queries from one of appellant's representatives and FAC, the DAFM Inspector explained the content (or lack thereof) in the Inspector Certification report; citing that a complete record of what was populated at the time of the decision making has been made available and that incomplete fields have been added to the format since and the non-entries of other fields under the assessment to determine for EIA was due to IT glitches and that these would have been populated at the time of his decision making. The DAFM Inspector also submitted that the vast majority of the site is free draining and that the public road was adequate in terms of the application before him. The potential run off from farming activities was also raised.



In addressing the grounds of appeal, the FAC considered, in the first instance, the contention that the proposed development should have been addressed in the context of the EIA Directive. The EU 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. Neither afforestation nor deforestation (nor clear-felling) are referred to in Annex I. Annex II contains a class of project specified as "initial afforestation and deforestation for the purpose of conversion to another type of land use" (Class 1 (d) of Annex II). The Irish Regulations, in relation to forestry licence applications, require the compliance with the EIA process 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. Article 4 of the EIA Directive requires that a determination be made available to the public and, where it is decided that an environmental impact assessment is not required, state the main reasons for not requiring such assessment with reference to the relevant criteria listed in Annex III, and, where proposed by the developer, state any features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment. In response to questions at oral hearing as to the absence of responses to a number of questions on DAFM's Inspector Certification report, being part of the assessment to determine EIA requirement, the DAFM Inspector indicated that the answers to those questions would have been known to the author of the assessment at the time it was done but that the absence of entries in the record available to the FAC for those questions was due to the implementation by DAFM of a new version of the IT-assisted assessment process after the time when these data were first calculated. This omission in the assessment record at the time of oral hearing, which is relied on to determine the need for an EIA, is considered by the FAC to be an error in this case. While this missing data may have been known to the author of the assessment report at the time of the decision, the error is regarded as significant, particularly given the absence of a record of consideration of other plans and projects in combination with the proposal. While noting the submissions made by DAFM at the oral hearing, the FAC concluded that a new assessment to determine whether an EIA is required should be undertaken regarding this proposal.

In addressing the Habitat Directive grounds of appeal, the FAC considered, Under Article 6(3) of the Habitats Directive, any plan or project not directly connected with or necessary to the management of a European site, must be subject to an assessment of the likely significant effects the project may have on such a designated site, either individually or in combination with other plans projects, having regard to the conservation objectives of that designated site. In this case, the DAFM undertook a Stage 1 Appropriate Assessment screening, found two European sites within 3km of the proposal, Lower River Shannon SAC and River Shannon and River Fergus SPA. The screening stated that the proposal area was not hydrologically connected to them and gave reasons for screening out the proposal, including that the lands was without any drains to carry water off site downstream, and that an Appropriate Assessment was not required. Hydrological connection to the Lower River Shannon SAC was submitted in the written grounds of appeal and at the oral hearing and the DAFM subsequently accepted that the proposal area is hydrologically connected to European site(s). The FAC consulted publicly available information from the NPWS and EPA and identified the same two sites within 3km of the proposal area and identified six more within 15km; Barrigone SAC, Knockanira House SAC, Askeaton Fen Complex SAC, Newhall and Edenvale Complex SAC, Lough Gash Turlough SAC and Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA. Of these additional European sites, the closest is Barrigone SAC at c. 9.3km. The FAC find the proposal area is hydrologically connected to the Lower River Shannon SAC and River Shannon and River Fergus SPA. In addition, the record does not contain a consideration of other plans and projects in combination with the proposal. Based on the information before it, the FAC considered that the requirements of the Habitats Directive in respect of Stage 1 screening for Appropriate Assessment were not satisfactorily met prior to the granting of the licence. The FAC is satisfied that this constitutes a serious error in the making of the decision and that a new screening of the application for Appropriate Assessment is required and should be undertaken regarding this proposal.



Regarding other contentions raised with regard to the environment, such as water quality, the FAC reviewed the material submitted by all parties to the appeal. The proposal is for up to 250kg granulated rock phosphate fertiliser per hectare to be applied and herbicide control in years 0, 1, 2 & 3, while the need for drainage was disputed at the oral hearing. The proposal area is surrounded by grassland and adjoins an aquatic zone, as the Crovraghan River, as shown on the submitted biomap, is along the north west boundary of the site. The publicly available EPA maps and data confirm the proposal area is in the Shannon Estuary North WFD catchment and Killadysertstream\_010 river sub basin and water drains to the Fergus Estuary; the Killadysert Stream\_010 river waterbody has an unassigned status (2013-2018) and Fergus Estuary transitional waterbody has a moderate status (2013-2018). Forestry is not listed as a pressure in the area. The proposal area is hydrologically connected to the Lower River Shannon SAC and River Shannon and River Fergus SPA. The DAFM submitted that the majority of the site is free draining and identified the slope as mainly flat to moderate (<15%) in the southern half and moderately steep on the northern half. The licence conditions contain specific environmental and silvicultural conditions, one of which is namely; no issues pertaining to water or aquatic zones on this well drained site, mound drains are not required on the vast majority of this site. The revised biomap submitted sets out in plot 10 inverted mounding only. The FAC considers that a new assessment to determine EIA requirement should deal further with any pertinent water quality issues.

In relation to the various grounds generally regarding the impact of the development on properties, scenic views and the landscape, the DAFM submitted that the impact on the landscape would be minimal, and that the setbacks imposed on / included in the proposal together with the requirement to plant broadleaf species in certain places adequately addressed these matters. The FAC in considering these matters find the area is rural and agricultural in nature, but proximate to Kildysart village, with a dispersed settlement pattern along the adjoining road but with some ribbon development along the R473 from which the site is visible, and from where the Shannon Estuary and some its Islands can also be viewed. The FAC finds the required setback distances from dwelling houses and associated buildings is 60 meters without written consent of the owner, as per the DAFM Forestry Standards Manual, November 2015, and that this is a condition of the licence. The licence conditions also contain a general condition of; compliance with Departmental guidelines and requirements for Landscape, Water Quality, Harvesting, Biodiversity and Archaeology. In addition, part of another condition on the licence is to install at least 3m hedgerow dripline setbacks. The boundary with the agricultural land to the west lies in a southwest to northeast orientation and direct impacts on light levels to this land would not be considered to be significant given the required setback from the relevant watercourse as per the DAFM guidelines, although the scale of the proposal could be a factor and should be considered under any new assessment. The FAC concluded that it was inconclusive from the evidence before it that the proposed plantation would result in a significant detrimental impact on dwellings or agricultural land in the area. The FAC noted the absence of a response from Clare County Council to the DAFM following referral of the proposal and find a lack of consideration of other plans and projects in combination with the proposal on the file. The FAC find that a new Appropriate Assessment screening of the proposal itself and in combination with other plans or projects under Article 6 of the EU Habitats Directive should take account of the Clare County Development Plan and any strategic tourism plans and projects in the vicinity of the proposal area. In addition, a new assessment for EIA requirement should consider landscape impacts amongst its criteria.

In relation to the grounds raised in regard to the adjoining road and road safety the DAFM asserted that the road was suitable for use by machinery accessing the site at planting and that this would not be dissimilar to current usage of the road. The FAC finds there is access from the site onto the public road and that while other users of the road may be discommoded by traffic servicing the proposal area for relatively short periods over the life of the proposed plantation, and that some of the issues raised by the appellants may relate to the management of the public road network by separate authorities, the FAC concluded that it is not satisfied that the DAFM made an error in its consideration of the application for a licence in respect of these grounds of appeal.

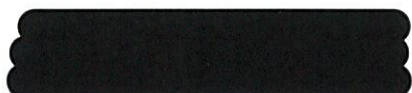
In relation to noise and mental health, the FAC considered the evidence presented including the type of operations and indicative time period required and considered the proposed operations would not significantly impact from a noise perspective. In relation to the grounds raised regarding fire risks the FAC



considered the diversification of species and provision of setbacks in this regard, and that the requirements of the DAFM Forestry Standards Manual, November 2015, in relation to fire risk have been followed by the DAFM. There is no high-risk bogland connected to the site and the prescribed setback requirements have been met. In relation to grounds raised regarding wildlife, no convincing evidence was provided of the presence of any protected habitats or species on the proposal area, however the River Shannon and River Fergus SPA is in close proximity and the FAC considered that these grounds will be addressed under a new Appropriate Assessment screening. In addition under Non Designated Habitats in the DAFM's assessment to determine EIA requirement, it was indicated that the application should be referred to the Forest Service Ecologist, however no evidence of this being done was presented; the FAC consider this will be reviewed under a new assessment to determine EIA requirement. In relation to the grounds regarding archaeology, the FAC considered that issue was appropriately considered by the DAFM in their assessment and that recommendations arising from this have been attached as conditions to the licence.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal, and submissions received at the oral hearing. The FAC is satisfied that a significant error or series of errors was made in making the decision and is setting aside and remitting the decision back to the Minister to undertake a new assessment to determine whether an EIA is required regarding this proposal and to undertake a new Appropriate Assessment screening of the proposal itself and in combination with other plans or projects under Article 6 of the EU Habitats Directive before a new decision is made.

Yours sincerely,

A large black rectangular redaction box covering the signature of the official.

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Mr. James Conway (on behalf of the Forestry Appeals Committee)

