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22<sup>nd</sup> February 2021

**Subject:** Appeals FAC 066/2019, 067/2019, 068/2019, 069/2019, 070/2019, 071/2019, 072/2019, and 073/2019 regarding licence CN82447

Dear [REDACTED]

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 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.

#### Background

Licence CN82447 for afforestation of 19.12 ha, parts of which are in Clerragh, Bodorragha and Derrycashel, Co Roscommon was approved by the Department of Agriculture, Food and the Marine (DAFM) on 13<sup>th</sup> March 2019.

#### Hearing

An oral hearing of appeals FAC 066/2019, 067/2019, 068/2019, 069/2019, 070/2019, 071/2019, 072/2019, and 073/2019, of which all parties were notified, was held by a division of the FAC on 8<sup>th</sup> February 2021.

#### In attendance:

FAC Members:	Mr. Myles Mac Donncadha (Chairperson), Mr. James Conway, Mr. Seamus Neely and Mr Derek Daly.
Secretary to the FAC:	Ms. Emma Guerin.
Appellant [REDACTED]	[REDACTED]
Applicant [REDACTED]	[REDACTED]
DAFM Representatives:	Mr. Momme Reibisch, Mr Seppi Hona and Ms. Mary Coogan.

#### Decision

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notice of appeal, submissions made at the oral hearing and all other submissions received, and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to set aside and remit the decision regarding licence CN82447 back to the Minister.

The licence decision pertains to afforestation of 19.12 ha, parts of which are in Clerragh, Bodorragha and Derrycashel, Co Roscommon. The land is described in the Appropriate Assessment screening form as having a slope which is predominantly flat to moderate (<15%) with the underlying soil type being predominantly podzolic and the project area is described as being crossed by / adjoining an aquatic zone. It is located in the Boyle\_020 sub catchment and the Boyle\_040 river waterbody and for which the WFD status was recorded as 'moderate' during the 2013-2018 assessment. The proposed species are Sitka Spruce (85%) and Broadleaf (15%). The project was referred to Roscommon County Council who made a response on 11<sup>th</sup> February 2019 dealing mainly with water quality matters and a further response on 13<sup>th</sup> March 2019 dealing mainly with roads matters. The DAFM confirmed that the application was subject to a field assessment on 7<sup>th</sup> February 2019 after which it sought further information from the applicant regarding the exclusion of some lands from the application and revised maps to identify additional features such as watercourses. The DAFM recorded an Appropriate Assessment screening of the proposal and determined that it did not require an Appropriate Assessment. DAFM also confirmed that the Appropriate Assessment process used at the time assessed Natura 2000 Sites within a 3km radius and that an in-combination assessment / statement did not form part of that process. It further recorded a consideration of the application for EIA and determined that it did not require an EIA. The approval was issued on 13<sup>th</sup> March 2019 with a number of conditions attached.

Eight appeals were lodged against the decision (FAC 066 - 073/2019) which submitted grounds including those summarised below;

- Grounds of appeal FAC 066/2019 include; submission that the road is not suitable for heavy machinery, that the forestry will affect light into the home and views, and that as the forestry grows it will shade the road and could lead to dangerous conditions in bad weather.
- Grounds of appeal FAC 067/2019 include; submission that planting on both sides of this 2-metre-wide country road would destroy it, that a big portion of adjoining townlands and other townlands have been planted already, that this project would destroy the echo (sic) system in the area, and that there will be a high risk of fire and danger to adjoining farms and houses.
- Grounds of appeal from FAC 068/2019 include; submission that (appellant) bought the house & land largely because of scenery and wildlife and submits that the planting will ruin it, that (appellant) owns 14 acres of land that look out over the project area, that the land under the forestry to the rear of (appellants) house is dark and dead, that quality of communal life will be disrupted and spoiled, that historic wells should be preserved, raised concerns regarding water quality and the need to carry out surveys of local flora and fauna, raised concerns regarding fire safety, and enclosed a document (up to 28 pages) from '*residents and landowners*' of adjacent properties raising objection on grounds including Environmental, Safety (Road) and Social.
- Grounds of appeal from FAC 069/2019 include; submission that (appellant) bought the house & land largely because of scenery and wildlife and submits that the planting will ruin it, that (appellant) owns 14 acres of land that look out over the project area, that the land under the forestry to the rear of (appellants) house is dark and dead, that quality of communal life will be disrupted and spoiled, that historic wells should be preserved, raised concerns regarding water



quality and the need to carry out surveys of local flora and fauna, raised concerns regarding fire safety, and enclosed a document (up to 28 pages) from '*residents and landowners*' of adjacent properties raising objection on grounds including Environmental, Safety (Road) and Social.

- Grounds of appeal FAC 070/2019 include; Darkness and silence, submitting that darkness in the forestry will kill the existing native and protected species, silence because native animal species cannot live within Sitka spruce plantations, submits that the application leads directly to destruction of native Irish habitats and that the project raises further fears of fires around homes, and encloses a document (up to 28 pages) from '*residents and landowners*' of adjacent properties raising objection on grounds including Environmental, Safety (Road) and Social.
- Grounds of appeal FAC 071/2019 include; submission that based on the information supplied it was not possible to make a decision which was in compliance with the requirements of the Habitats and EIA directives, and references the following judgements of the OEU; Case C-258/11, Peter Sweetman and Others v An Bord Pleanála, Case C-164/17, Edel Grace and Peter Sweetman v An Bord Pleanála, Case C-323/17 People Over Wind and Peter Sweetman v Coillite Teoranta, and Case C-461/17 Brian Holohan and others v An Bord Pleanála.
- Grounds of appeal FAC 072/2019 include; concerns regarding Water Quality, concerns regarding Bio Diversity, and concerns regarding Mental Health.
- Grounds of appeal FAC 073/2019 include; environmental (submits that a well and streams flow through the land and into Lough Key, submits that red squirrels, barn owls, badgers, and other protected species reside in the area, submits that several red listed species of flora grow on the land and referenced that a raised bog has been tentatively identified adjacent to and downhill of the applicant's land, submitted that the road is not suited to machinery and large trucks and that the increasing afforestation of the area is destroying the regions natural resources and beauty, submits that approximately 33% of the adjacent townlands is currently afforested, and encloses a document (up to 28 pages) from '*residents and landowners*' of adjacent properties raising objection on grounds including Environmental, Safety (Road) and Social.

In the statements provided to the FAC, the DAFM submitted that the decision was issued in accordance with procedures SI 191/2017 and the 2014 Forestry Act. The statements provided a response to the grounds of appeal. At the Oral Hearing the DAFM Representatives submitted that the application was processed following procedures in place at the time including that the Appropriate Assessment screening was carried out on European Sites within a 3 km radius of the project and confirmed that the application was subject to a site visit / assessment on 7<sup>th</sup> February 2019. The DAFM representative also confirmed that the information submitted by the applicant, including maps and other details, were considered in processing the application.

At the oral hearing Mr Michael Mc Govern, the appellant in the case of FAC 070/2019, contextualised his submitted grounds of appeal and made more specific reference to some of the grounds. He referenced the size of the road servicing the project location, the safety of children on the road, a legacy of traffic, wildlife in the area, the topography of the site, drainage, water quality and made specific reference to some of the content of a submission from the Department of Culture Heritage and the Gaeltacht which



was received by DAFM some weeks after the issue of the licence. At the oral hearing Mr Andrew Chilton, the appellant in the case of FAC 072/2019, also contextualised his submitted grounds of appeal and made more specific reference to some of the grounds. He acknowledged the opportunity to be heard, submitted that he was not against forestry as a principle while asserting that his main issue is about planting Sitka spruce rather than natural (native) species, he emphasised the long-term implications of an approval, referenced wildlife in the area, raised concerns about loss of view and herbicide use, and submitted that there should be a better mix of planting.

In relation to the various grounds generally regarding the impact of the development on light to properties, views, and the potential shade caused by the forestry as it matures, the DAFM representative asserted that the setbacks imposed on / included in the proposal together with the requirement to plant broadleaf species in certain places in the view of DAFM adequately addressed these matters. In relation to the grounds raised regarding roads and road safety the DAFM representative asserted that this was a matter for the Local Authority, in this case Roscommon County Council, who he stated had raised no specific objection to the project in their response following referral. In relation to the submission from the Department of Culture Heritage and the Gaeltacht (DCHG) and the non-referral of the project to that Department / NPWS, the DAFM representative asserted that the project was one that did not fall into the category of mandatory referral and that it was not considered necessary to do so on a discretionary basis. The DAFM representative advised that the submission from DCHG was received a number of weeks after the licence had issued. In response to a question at oral hearing as to why only one of the townlands across which the project is situated was listed on the Appropriate Assessment screening form, the DAFM representative confirmed that the information technology system in place at the time could accommodate one townland per project and that the full description of the location would have been known to those dealing with it at the time. There were also some differing views as to the adequacy of the mapping provided with the application to enable watercourses to be clearly identified. The DAFM representative who conducted the site inspection outlined the focus of his inspection, referred to needing to ensure the site could support the species composition proposed and to identify important features on site, such as relevant watercourses. He described his findings and outlined the associated planting works approved under the licence and the protections this would give to the identified watercourse. He also referred to the specific conditions added to the licence regarding the retention of all hedgerows and trees and restrictions on herbicide use. In relation to the grounds raised in the appeals and as elaborated on at oral hearing in relation to the adequacy of the maps in this case and the submission from the DCHG / NPWS, the FAC noted the response of the DAFM representative to a query at oral hearing wherein he confirmed that as the submission from DCHG / NPWS was received by DAFM sometime after the issue of the licence then he would not have had sight of same when assessing the application. The FAC also noted the assertion by the DAFM representative at oral hearing that he was satisfied that the updated maps received by DAFM in this case were sufficient to enable an adequate assessment of the application.

Regarding Environmental Impact Assessment (EIA) and related matters in the grounds, the EU EIA Directive sets out in Annex II 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 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. In response to a question at oral hearing as to the absence of responses to questions 4,5,6,7 & 8 on DAFMs screening report being part of the assessment to determine EIA requirement (which included the questions on the extent of existing forestry cover in the area up to 500m from the project and similar questions on existing or approved planting projects in the same area), the DAFM representative indicated that the whole screening was carried out at certification stage, that the answers to those questions would have been known to the author of the screening but that the current absence of entries for those questions was due to the implementation by DAFM of a new version of the IT-assisted AA screening process since the time when these data were first calculated. The information necessary to answer the said questions, upon which the answers to questions 10 & 11 are dependant, was not available at oral hearing. This omission in the screening record on file 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 screening report at the time of the decision, the error is regarded as significant, particularly given the absence of a consideration of other plans and projects in combination with the proposal on the file, and closely relates to the grounds in this case. 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.

The DAFM undertook and documented an appropriate assessment screening of the proposal that found no Natura 2000 sites within 3km of the proposal. The record does not contain a consideration of other plans and projects in combination with the proposal. The FAC is satisfied that this constitutes a serious error in the making of the decision and while noting the submissions made by DAFM at the Oral Hearing, the FAC concluded that a new screening of the application for Appropriate Assessment is required and should be undertaken regarding this proposal.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal, and submissions received including at the oral hearing. The FAC is satisfied that an error or series of errors was made in making the decision and is setting aside and remitting the decision back to the Minister to carry out a new assessment to determine whether the application should be subject to the EIA process under the EU EIA Directive and to undertake an 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,

  
Seamus Neely On Behalf of the Forestry Appeals Committee

