



24 February 2021

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FAC ref: 643/2020

**Subject:** Appeal in relation to licence CN84619

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Minister for Agriculture, Food and Marine in respect of licence CN84619.

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 appeal.

#### **Background**

Afforestation licence CN84619 was granted by the Department of Agriculture, Food and Marine (DAFM) on 05 August 2020.

#### **Hearing**

An oral hearing of appeal 643/2020 was conducted by the FAC on 16 February 2021.

#### **Attendees:**

FAC: Mr Des Johnson (Chairperson), Mr Dan Molloy, Mr Luke Sweetman & Mr Pat Coman  
Secretary to the FAC: Mr Michael Ryan  
Appellant: [REDACTED]  
Applicant: [REDACTED]  
Applicant representatives: [REDACTED]  
DAFM representatives: Mr Seamus Kennedy, Mr Ken Bucke & Ms Mary Coogan

#### **Decision**

The Forestry Appeals Committee (FAC) considered all of the documentation on the file, including application details, processing of the application by DAFM, the grounds of appeal, submissions made at the Oral Hearing and all other submissions, before deciding to vary the decision to grant this licence (Reference CN 84619).

The proposal is for afforestation on a stated site area of 36.1ha at Grange East and Grange West, Co. Limerick. Planting would be on 6 plots (one plot is Bio) and 3022m of fencing would be provided. Proposed planting would be with Sitka spruce (22.73ha), Birch (4.01ha) and Pedunculate Oak (8.99ha). A biodiversity area of 0.37ha would be provided. Mounding and angle notch planting is proposed. There would be herbicide weed control in years 1-4. Underlying soils are stated to be Surface Water Gleys and the slope is flat to moderate. No additional drainage is required.

The DAFM produced an Appropriate Assessment (AAR) containing a screening for Appropriate Assessment and a Stage 2 assessment arising from the screening conclusion. Sites screened out for Appropriate Assessment (following expert review) are Clare Glen SAC, Glen Bog SAC, Glenstal Wood SAC, Slievefelim to Silvermines Mountains SPA and Shannon and River Fergus Estuaries SPA. Reasons for screening out these sites are an absence of Qualifying Interest habitats, low importance of foraging habitats and separation distance. The Lower River Shannon SAC is screened in for Stage 2 Appropriate Assessment (following expert review), and the reason stated is the significance of the project area for foraging, breeding and roosting for Qualifying Interests. The Stage 2 assessment in respect of the Lower River Shannon SAC lists the qualifying interests and conservation objectives, assesses the potential for significant effects and recommends site-specific mitigation measures relating to prevention of silt and sediment run-off, measures related to the Otter, and adherence to Environmental Requirements for Afforestation (DAFM 2016). The conclusion of the AAR is that *the project design, together with adherence to the relevant environmental framework and the site-specific measures, ensure that potential residual impacts do not arise and the proposed development individually will not prevent the qualifying interests of the Lower River Shannon SAC reaching favourable conservation status.* An in-combination assessment considers non-forestry projects – this includes dwellings, agricultural sheds and silage slab, and a single forestry related project (since 2017). The AAR contains appendices relating to Hen Harrier Evaluation, Maps and Inspector's screening.

The DAFM Appropriate Assessment Determination (AAD) concluded that *the proposed development individually or in combination with other plans or projects, will not adversely affect the integrity of a European site, in particular the Lower River Shannon SAC, having regard to the conservation objectives, and will not affect the preservation of these sites at favourable conservation status, if carried out in accordance with the specific mitigation measures recommended.*

*Based on objective information, no reasonable scientific doubt remains as to the absence of adverse effects on the integrity of any European site.*

The DAFM referred the application to the Local Authority, National Parks and Wildlife Services (NPWS) and, internally, sought an Archaeological report. In response, the NPWS state that the site is 1.7kms upstream of the River Mulkear which forms part of the Lower River Shannon SAC. It is important to ensure that there will be no significant impact on the SAC. All mature trees and hedgerows should be retained. The Archaeologist's report states that the site is contiguous to one Recorded Monument – burnt mounds. The Ordnance Survey shows an historic farmyard with buildings and infields. These may survive in whole or in part. Archaeological conditions are recommended. There was no response from the Local Authority recorded.

The licence was granted on 05.08.20. It is subject to standard conditions with additional conditions relating to the following:



- Adhere to all mitigation measures on P 4 of the AAD dated 05.04.20
- Retain all mature hedgerows and broadleaves
- Adhere to conditions 1-8 of the Archaeological Report dated 24.10.19.
- All Guidelines to apply
- Additional Archaeological conditions.

There is a single appeal against the decision to grant the licence. The grounds contend that there is a breach of Articles 2(1) and 4(3) of the EIA Directive as there was no screening for EIA. The determination made by the Inspector in respect of EIA is inadequately reasoned. There is an error in law. There is inadequate information on protected species and habitats for EIA screening. There is no evidence of IFI, EPA and Iarnrod Éireann being consulted. Areas of Biodiversity Enhancement do not provide the best opportunities for biodiversity enhancement within the forest. The Stage 2 Appropriate Assessment is not legally valid. There can be no lacunae, and findings must be complete, precise and definitive. The in-combination information is insufficient to enable assessment of cumulative effects. The opinion of the general public was not sought under Article 6(3) of the Habitats Directive. Licence conditions do not provide for the strict protection of Annex IV species. Licence conditions do not provide for the protection of all wild birds during breeding and rearing season. The Forest Service did not supply, in an appropriate timeframe, all relevant records as required under the EIA Directive.

In response, the DAFM state that the licence application was field and desk assessed on 03.06.20. Screening for Appropriate Assessment was based on Forest Services' Appropriate Assessment procedures and guidance. The AAD by a DAFM ecologist outlined mitigation measures required to protect the integrity of relevant Natura 2000 sites. An in-combination assessment was also carried out. All procedures and standards were adhered to in the making of the decision to recommend approval.

An Oral Hearing was held on Tuesday 16<sup>th</sup> February 2021. All parties were invited to attend and participate. The FAC sat in person and remotely, and all parties participated remotely. During the hearing, the appellant experienced technical difficulties which, despite several pauses in the proceedings and attempts to re-establish a satisfactory link, could not be resolved. With the agreement of the applicants and the DAFM, an electronic version of the appellants submission to the hearing was read into the record (and a copy subsequently sent by e-mail and attached to the file). The DAFM detailed the background to the making of the decision to grant the licence, confirming that the application had been both desk and field assessed. The AAR and AAD had both been prepared by an ecologist (contracted to the DAFM), had been reviewed internally by an Environmental Scientist and had played an important role in the decision to grant the licence. The applicants stated that the site was farming land and consideration had been given to which tree species would be best to grow. Two plots of Oak were proposed (approximately 25% of the area) and in total broadleaves would constitute approximately 30% of the site area. The appellant (submission read into the record) stated that the Inspector had screened in a Hen Harrier SPA but that the ecologist had screened it out. The SPA is within 6.7km of the site and well within the 11km buffer. While foraging habitat is low it is not nil. The Appropriate Assessment screening (AAS) refers to rough grazing on the site whereas the AAR

states that it is Wet Grassland. These are foraging habitat. This project may impact on the Hen Harrier by reducing the foraging area. A Natura site can only be screened out for Appropriate Assessment if it can be excluded on the basis of objective scientific information that there is no possibility of a significant effect or of contributing to a significant effect. In this case significant effect is improbable but not impossible. The DAFM is being blinkered in times of a biodiversity crisis. Two in-combination assessments are considered but these are not aligned with each other. The appellant states that he counted around 30 projects within 1km of this site on the Forest Licence Viewer. There are no restrictions proposed during rainfall events and too much scope is being left to the developer to provide the necessary degree of certainty of no impact. The Bio-Map does not show all hedgerows. Townland boundary hedgerows have not been identified and these are of cultural and historical value. Correct mapping of hedgerows is a legal issue. The appellant asks what consideration was given to the Brittas House airstrip and states that there is no assessment of Annex IV species of bats. In response to questions by the FAC, the DAFM stated that the site has been partly neglected over time, is underlain by Surface Water Gleys and is heavily poached. The northern plot has some areas of acid brown earths to grey brown podzolics and the southern plot is heavier with low lying Surface Water Gleys. The site has few veteran trees and is probably not suited to bats. The appellant stated that there are two townland hedgerow boundaries with likely significant habitat. The applicant stated that the site is bisected by a busy road and railway line and these are likely to impact on any Hen Harriers present in the area. It is proposed to provide a 3-5m setback from each hedgerow and provide 3-5 rows of broadleaves along hedgerows. The DAFM stated that there is a required setback of 20m along the railway line and this must be maintained as a buffer. The appellant stated that the AAR and AAD had been based on false statements and information. The percentage of forest cover is higher than stated.

Addressing the written grounds of appeal, the FAC considered, in the first instance, the contention that the licence is in breach of Articles 2(1) and 4(3) of the EIA Directive. Following examination of the details of the application, the FAC considered that there was adequate information before the DAFM in respect of the characteristics of the proposal, the location of the site and the type and characteristics of potential impacts from the proposed development in order to fulfil the requirements for EIA screening. The Inspector's Certification states that the site is suitable for 10% broadleaves, is not prone to flooding, acid sensitive or sensitive to fisheries. The site is free from shell marl or highly calcareous soils. It is not within a Hen Harrier SPA or within the catchment for freshwater pearl mussel. The County Development Plan does not designate the site as Prime Scenic Amenity and there are no High Amenity Landscape considerations. There is 1% forest cover in the application townland and 7.11% cover within 5km. There is 3.82% forest cover in the underlying waterbody. The proposed development and associated operations do not threaten the achievement of the 'good ecological status' set for the underlying waterbody. There would be no impact on any densely populated area or any area commonly used by the general public for recreation and no impact on any Way-Marked Way. While the appellant contests the % forest cover figures applied by DAFM, an examination of publicly available aerial photography (google maps) clearly indicates that this is a rural area where agriculture is the predominant use and forestry is limited to relatively small-scale dispersed plantations. The lands are bisected by the Tipperary road (N24) and railway line (Limerick-Limerick Junction) but these, or a nearby airstrip, in combination with the proposed development are not likely to give rise to significant environmental effects. The FAC concluded that the appellant had failed to provide any convincing



evidence to indicate that the DAFM had failed to carry out EIA screening or that its conclusions contained in the Inspector's Certification were incorrect.

The appellant contends that the Stage 2 Appropriate Assessment carried out is not legally valid. The FAC considered the procedures followed by the DAFM in the AAR, including the in-combination assessment, and the AAD as detailed above, and that both had been considered in the making of the decision to grant the licence. The FAC noted the evidence provided by DAFM that both the AAR and AAD had been prepared by an Ecologist and independently reviewed by an Environmental Scientist. The FAC considered that there is no convincing evidence before it that the proposed development alone, or in-combination with other plans or projects would be likely to give rise to any significant effect on the *Slievefelim to Silvermines Mountains SPA* having regard to the qualifying interest of that SPA (Hen Harrier), the separation distance (c.6.8km), the existing use of the project lands and the intervening land uses between the project lands and the Natura 2000 site. As such, the FAC finds no significant or serious error arises in the Appropriate Assessment screening procedure, the AAR and AAD, and considers that, based on the information before it, the AAD is sound. The FAC considers that there was no legal obligation on the DAFM to consult with the general public before completing its Determination.

The appellant contends that the licence does not contain conditions providing for the strict protection of Annex IV species (including bats) or for wild birds during the breeding and rearing season, but fails to submit any specific detailed information as to the presence of either on the project lands. Having regard to the nature and scale of the proposed development, and to the characteristics of the project lands and surrounding area (including the N24 and railway line), and to the absence of specific detailed information, the FAC considers that no convincing grounds exist for the attachment of additional conditions to the licence related to the strict protection of either Annex IV species or wild birds.

The potential impact on biodiversity was raised and discussed at the Oral Hearing. No specific information was provided regarding biodiversity on the project lands, which are in agricultural use. The FAC noted that approximately 25% of the proposed development would be Oak and approximately 30% (in total) would consist of broadleaves. The FAC further noted that there would be a 20m setback exclusion buffer around a Recorded Monument on the lands, 20m setback from the railway line, and 3-5m setbacks and broadleaf planting along existing hedgerows. In these circumstances, the FAC considered that refusal of the licence would not be warranted for reason of loss of biodiversity. Having regard to the specific circumstances relating to this site, the omission of mapping of all biodiversity measures was a significant error and the FAC considers that an additional condition should be attached to the licence requiring the applicant to submit a detailed map clearly showing all the required setbacks on the site to the DAFM prior to the commencement of the proposed development and for placement on the DAFM file.

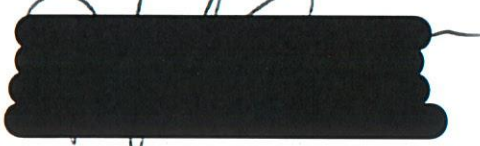
The FAC concluded that, subject to the attachment of the following additional condition to the licence dated 05.08.20 (and all of the conditions attached to that licence), and which varies the decision to grant the licence, the proposed development would be consistent with Government Policy and Good Forestry practice.

Additional condition to be attached to the licence

*Prior to the commencement of development on the site, the applicant shall submit to the DAFM a detailed map clearly indicating all of the required setbacks from features on and adjoining the site, such as hedgerows, watercourses, Protected Structure, railway line and public road, and the map shall be attached to, and become part of the DAFM file.*

Reason: In the interests of providing clarity and to ensure the full range of biodiversity measures pertaining to this site are fully recorded.

Yours Sincerely,

A large black rectangular redaction covers the signature area. A handwritten signature is visible above the redaction, and a small mark is visible below it.

Pat Coman, on behalf of the FAC