



[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

26 July 2021

**Subject:** Appeal FAC 043/2021 and 045/2021 regarding CN87526

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 14A (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 CN87526 for Afforestation of 1.43ha, in Annaghderg Lower, Co Leitrim was approved by the Department of Agriculture, Food and the Marine (DAFM) on 27 January 2021.

#### **Hearing**

A non-oral hearing of appeals FAC 043/2021 and 045/2021 of which all parties were notified, was held by a division of the FAC on 22 July 2021.

#### **In attendance**

FAC Members: Des Johnson (Chairperson), Luke Sweetman and Dan Molloy  
Secretary to the FAC: Michael Ryan

#### **Decision**

The Forestry Appeals Committee (FAC) considered all of the documentation on the file, including application details, processing of the application by DAFM and the grounds of appeal and all other submissions, before deciding to set aside and remit the decision to approve the licence (Reference CN 87526).

The proposal is for afforestation on a stated site of 1.43ha at Annaghderg Lower, Co. Leitrim. The application was not referred for comments from any referral body.

The Inspector's Certification states that the proposed development was field and desk assessed. The project lands are not prone to flooding. They are free from shell marl or highly calcareous soils. The area is not designated as acid sensitive. The project lands are not within an NHA, pNHA, SAC, SPA or National Park, and are not within a Freshwater Pearl Mussel (FWPM) catchment. There are no

archaeological sites or features. This is not a Prime Scenic Area as per the County Development Plan and there are no High Amenity considerations. The area is not sensitive to fisheries. There would be no impact on any Way-Marked Way, no impact on a densely populated area, and the area is not commonly used by the general public for recreation. Ground preparation would include woody weed removal and mounding, and slit planting is proposed. No drainage is required. Road access is provided. There would be manual herbicide control in years 0-3. Soils are predominantly podzols and the slope is predominantly flat to moderate. The project lands are crossed by/adjoin an aquatic zone. Appropriate Assessment screening is carried out for Natura 2000 sites within a 15km radius and one site is identified – Cuilcagh-Anierin Uplands SAC. This site is screened out for reason that project area is downstream, there is a lack of hydrological connection, and the Natura 2000 site is separated from the project lands by 12.8km. There is an absence within and adjacent to project area of any habitats listed as qualifying interests of the Natura site. There is an absence of any aquatic zone within or adjoining the project area, and an absence of any significant relevant watercourse within or adjoining the project area. There is approximately 11.67% forest cover in the townland, approximately 20.07% within 5km, and approximately 12.8% in the underlying waterbody.

An in-combination report is dated 25.01.2021. This lists non-forestry projects to include dwellings, domestic extensions, forestry road entrances, and grid connections for windfarms. Forestry related projects are afforestation (9), forest roads (4), private felling (24), and Coillte felling (5). The River Sub-Basin Cloone\_030 has c.17% forest cover.

The licence issued on 27.01.2021. It is subject to standard conditions plus additional conditions requiring the planting of groups of broadleaves along the eastern and western boundaries for landscaping purposes, adherence to Environmental requirements for Afforestation, and all Guidelines to apply. The species approved are 1.22ha Sitka spruce and 0.21ha ADB.

There are two appeals against the decision to approve the licence. One of the appellants owns the adjoining property to the northwest of the site, and the second appellant resides in a dwelling to the south of the site, on the opposite side of the public road. In summary, the submitted grounds contend as follows:

1. The Site Notice was posted in the incorrect location and was placed on a neighbouring (Appellant's) property
2. The proposed forest would be a risk to the quality of drinking water in a drinking water well that the appellant uses. This will represent a health risk for years to come. (An aerial image is submitted purporting to show the well).
3. The proposed development would block sunshine and daylight from the appellant's property in the east and south
4. The appellant's sightlines and access would be seriously restricted from both a road safety and planning viewpoint
5. Afforestation is having a detrimental impact on rural society with over 50% of Leitrim agricultural lands already planted. This results in depopulation, closure of primary schools, loss of GAA clubs. The afforestation is being developed by Vulture Funds and speculators, and local farmers cannot compete.

In response, the DAFM state that the applicants submitted a map showing the location of the Site Notice which was correct. There was no Site Notice on the day of field inspection, but this was outside the public participation period. The Inspector was unaware of the public drinking well or any right of way to access the well. The applicant searched but was unable to find the well or access to it.

In supplementary submissions, responding to the DAFM response, the appellants re-emphasise the matters raised in the written grounds of appeal with supporting maps and photographs. In summary the submissions are as follows:

#### Appellant 1

- A map is submitted showing public drinking water well and run-off from it along the north-western project site boundary and between the site and the appellant's lands
- The appellant hopes for a 60m setback from the watercourse for environmental reasons if the development goes ahead. His preference is that the proposed forestry does not happen
- The drinking well has a concrete structure with steps into it. The appellant uses the well for drinking water
- If the plantation goes ahead there will be no view crossing the road at Dyer's Bridge. Access is already dangerous
- Afforestation is having a detrimental impact on Leitrim. The applicant does not live in the area but 20km away.
- The appellant proposes to build in the future and the proposed development would hinder light and views. There should be a 60m setback from the site boundary if the proposed development goes ahead.
- The public notice was placed on the appellant's lands c.100m from where it should have been placed. This makes the application null and void or incorrect.

This submission includes OS map and photograph.

#### Appellant 2

- This submission includes an OS map illustrating the location where the public notice should have been located and a photograph of the actual location
- The location of the well is indicated on a map and there is a photograph of the well. The appellant has huge concern that the proposed development will impact negatively on water quality. The run-off from the well runs along the north-western site boundary
- A map is submitted showing the area in the vicinity currently planted. This is only 28m from the appellant's house
- The proposed development, along with existing forestry, will have immense visual impact, and block clear views of the mountain and surrounding landscape. There would be a significant reduction in light levels and a negative impact on the health and wellbeing of the appellant's young family.

The submission includes maps and photographs illustrating the comments made.

The Forestry Appeals Committee considered the appeals on 22 July 2021. Based on the information before it, the FAC considered that the key issues in this case relate to the following:

- Public Notice

- Existence of spa well
- Residential amenities
- Traffic safety
- National policy matters

There is a clear conflict in the evidence submitted regarding the location of the public notification. An appellant contends that the notice was placed at an incorrect location and on his property adjoining to the north of the project lands. The DAFM statement is that the location of the public notice was correct but that the notice was not in place at the time of site inspection. There is no submission from the applicant on this issue. The appellant claims are supported by photographs, stated to show the notice in the incorrect location. The location of the public notice did not prevent the lodging of appeals against the decision to grant the licence but, if placed in an incorrect location, could have been misleading to the public who may otherwise have participated in the consent process. On this issue, the FAC concluded that the weight of evidence before it lies with the appellants and that, in terms of probability, the public notice was erected at the incorrect location. On this issue, the FAC concluded that there was a significant error in the making of the decision to grant the licence.

The appellants contend that there is a public drinking water well that was not taken into consideration and submit photographs to support this contention. The DAFM state that they were unaware of the existence of the well at the time of the making of the decision. A 'Spa Well' is clearly shown on the OS Map (copy submitted by appellants), although the precise location of the well is unclear. The appellants contend that run-off from the well is south westwards along the boundary between the project lands and an appellant's adjoining property. Reference to the EPA public website does not show any watercourse along this boundary and there is no documentary evidence of any aquatic zone on the project lands. There is an Order 1 stream flowing south westwards along the northern boundary of the adjoining (appellants) property and this joins with an Order 2 stream flowing southwards. The EPA website indicates that there is no downstream connection from this stream to any Natura 2000 site within 20,000m. Based on the evidence before it on this issue, the FAC concluded that the weight of evidence lies with the appellants and that consideration should have been given to the existence of the Spa Well and its run-off before the making of the decision to grant the licence. The FAC concluded that this was a significant error.

The appellants contend that the proposed development would give rise to a loss of daylight and sunlight and landscape views. The FAC noted that the proposed development would have to be carried out in accordance with DAFM Standards and Guidelines, including required setbacks from residential property. The FAC noted that there is no residential property adjoining to the north, but that the appellant indicates that he may develop this site in the future. However, there is no residential property on these lands at present and any future proposal for residential development would be subject to the statutory planning process. The FAC found no reason that the licence should not have been approved for reason of the obstruction of a private view. On this issue, the FAC found no significant or serious error occurred in the making of the decision by the DAFM.

One appellant contends that the proposed development would give rise to traffic safety issues and that there is already a dangerous access at Dyer's Bridge to the south of the project lands. The FAC

noted that there would be a standard setback for conifers from the public road. Based on the information before it, the FAC found this ground of appeal was not substantiated.

The appellants refer to the extent of forestry already in Leitrim and contend that this is having a detrimental impact on the existing population. The FAC noted that there is no evidence that the proposed development would conflict with any policies as set out in the statutory Development Plan or with National policy. The FAC is not a policy making body but considers national and local policy in the determination of appeals.

The FAC concluded that there were significant errors in the making of the decision to grant the licence in that the existence of a Spa Well was not considered and, on the balance of evidence, the public notice was placed in an incorrect location not on the project lands. In deciding to set aside and remit the decision, the FAC considered that the proposed development should be the subject of a new public notice placed on the project lands in accordance with the Regulations, and that the Minister should assess the significance of the existence of the Spa Well as indicated on Ordnance Survey mapping and any run-off from the Well, before making a new decision in respect of CN 87526.

Yours sincerely

A large black rectangular redaction box covering the signature of Des Johnson.

---

Des Johnson, on behalf of the Forestry Appeals Committee

