



[Redacted]

12<sup>th</sup> March 2021

**Subject:** Appeals FAC 394/2019, 463/2019, 464/2019, 465/2019, 466/2019, 467/2019, 468/2019, 469/2019, 470/2019, 471/2019 and 487/2019 regarding licence CN84549

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 CN84549 for afforestation of 11.2 ha, parts of which are in Drumminion and Aghnacreevy, Co. Cavan was approved by the Department of Agriculture, Food and the Marine (DAFM) on 26<sup>th</sup> November 2019.

#### Hearing

An oral hearing of appeals FAC 394/2019, 463/2019, 464/2019, 465/2019, 466/2019, 467/2019, 468/2019, 469/2019, 470/2019, 471/2019 and 487/2019, of which all parties were notified, was held by a division of the FAC on 1<sup>st</sup> March 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.

Appellants: [Redacted]

Applicant: [Redacted]

DAFM Representatives: Mr. Jhan Crane 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 CN84549 back to the Minister.

The licence decision pertains to afforestation of 11.2 ha at Drumminion and Aghnacreevy, Co.Cavan. The land is described in the Appropriate Assessment screening as having a slope which is predominantly flat to moderate (<15%), an underlying soil type which is predominantly brown podzolic in nature and that the project area is crossed by / adjoins an aquatic zone. It is located in the Rag (Cavan) \_010 river waterbody and for which the WFD status was recorded as 'poor' during the 2013-2018 assessment. The proposed species are Sitka Spruce (90% approximately) and Broadleaf (10% approximately). The project was not referred to any consultation body. The DAFM recorded an Appropriate Assessment screening of the proposal and determined that it did not require an Appropriate Assessment. It further recorded a consideration of the application for EIA and determined that it did not require an EIA. The approval was issued on 26<sup>th</sup> November 2019 with conditions attached.

Eleven appeals were lodged against the decision (FAC 394, 463-471 & 487/2019) which submitted grounds including those summarised below.

- Grounds of appeal FAC 394/2019 include: Submission that it was not possible to make a decision which was in compliance with the requirements of the Habitats and EIA directives, and having regard to a number of stated judgement / cases, submission that in relation to the test for Appropriate Assessment there is no need to establish such an effect; it is, as Ireland observes, merely necessary to determine that there may be such an effect, and submission that it is necessary to assess (sic) the cumulative effects of forestry on the area since 1989,
- Grounds of appeal FAC 463/2019 include: Objection to land being shadowed, & concerns regarding forest fires and view, concerns regarding protections for Wildlife, lane to land maintained by appellants (FAC 463/2019 and FAC 487/2019), lane not suitable for heavy machinery, and concerns of impact of water runoff,
- Grounds of appeal FAC 464/2019 include: Objection to land being shadowed and concerns regarding forest fires, concerns regarding protection for Wildlife, lane to land maintained by appellants (FAC 464/2019 and FAC 487/2019), lane not suitable for heavy machinery, doesn't want view of shed blocked and concerns of impact of water runoff,
- Grounds of appeal FAC 465/2019 include: Submission that plantation will be unsightly when cut down, concerns about the impact on wildlife, submission that there will be no life in Rural Ireland with planting, concerns about impact on light, doesn't want view of shed blocked, and concerns about drainage, shadowing of land and forest fires,
- Grounds of appeal FAC 466/2019 include: Submission that conditions of licence lack detail regarding concerns raised, concerns regarding access and egress via narrow laneway (via farm), concerns about lack of detail of impacts of initial planting / maintenance, concerns about need for repairs to the laneway, concerns about fencing needed to protect livestock, concerns about

proximity to appellants lands, concerns that the incidence of wildlife that are a risk to sheep will increase, and concerns about drainage and shadowing of land,

- Grounds of appeal FAC 467/2019 include: Submission that conditions of licence lack detail regarding concerns raised, concerns regarding access and egress via narrow laneway (via farm), concerns about lack of detail of impacts of initial planting / maintenance, concerns about need for repairs to the laneway, concerns about fencing needed to protect livestock, concerns about proximity to appellants lands, concerns that the incidence of wildlife that are a risk to sheep will increase, and concerns about drainage and shadowing of land,
- Grounds of appeal FAC 468/2019 include: Submission that conditions of licence lack detail regarding concerns raised, concerns regarding access and egress via narrow laneway (via farm), concerns about lack of detail of impacts of initial planting / maintenance, concerns about need for repairs to the laneway, concerns about fencing needed to protect livestock, concerns about proximity to appellants lands, concerns that the incidence of wildlife that are a risk to sheep will increase, and concerns about drainage and shadowing of land,
- Grounds of appeal FAC 469/2019 include: Concerns regarding protections for Wildlife, concerns about drainage and suitability of access lane, concerns about water quality / runoff, concerns about land shadowing and fire safety, and doesn't want view of shed blocked,
- Grounds of appeal FAC 470/2019 include: Concerns about land shadowing / drying conditions, concerns about suitability of road and about fire safety, submission that wildlife should be protected, specific request regarding fencing of land, submission that the road is too narrow, and concerns about water quality / runoff,
- Grounds of appeal FAC 471/2019 include: Concerns about land shadowing / drying conditions, concerns about suitability of lane and about fire safety, submission that wildlife should be protected, concerns about fencing of land, doesn't want view of shed blocked, and concerns about water quality / runoff,
- Grounds of appeal FAC 487/2019 include: Submission that points 5 and 6 in earlier communication regarding future planting and access have not been dealt with (in licence), raises concerns about Pearl Mussel, Curlew and Snipe, raises concerns about suitability of the access for future needs and references constraints in improving the access.

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 separate responses for each appeal. At the Oral Hearing the DAFM Representatives submitted that the application was partially processed following an older version of the Appropriate Assessment process and that while the application was certified two weeks after the current Appropriate Assessment process was introduced the implications of relying on mitigation to screen projects out for the purposes of Appropriate Assessment had not been fully realised. It was also stated that if screened under the current process that it would be screened in and that a separate In Combination assessment / statement had not been carried out in this case. It was confirmed that the application was subject to a site visit / assessment on 25<sup>th</sup> October 2019 and that the submissions / observations received were assessed during the site visit. At the oral hearing the appellant in the case of FAC 470/2019, contextualised his submitted grounds of

appeal. He referenced that he had the land (which is subject to the application) rented for about the past 20 years and had built up his farming enterprise on that basis, he mentioned that it is not intensively farmed, that no slurry or fertilizer is applied to it, submitted that run-off from the forestry will flood land downstream, submitted that the lane is only eight or nine feet wide with sharp bends, that a digger that worked on it recently had to unload at the public road and track to the lands, raised concerns about vermin arising, other planting in the area and the impact of trees on TV and broadband signals. The appellant in the case of FAC 468/2019 raised concerns about the suitability of the lane to service the plantation, mentioned that the applicant had not been involved in the maintenance of the lane in thirty years, mentioned that the lane passes through the middle of his farm and cannot be widened, mentioned that he is aware that lanes in similar circumstances elsewhere have been decimated by heavy machinery, submitted that each new forestry plantation impacts the social fabric locally and results in the loss of a neighbour / friend. He raised concerns about deer, mink and foxes. The appellant in the case of FAC 487/2019 raised concerns about water run-off from the project and its impact on aquatic life, raised concerns about the impact on broadband connectivity, mentioned that the applicant did not want to participate in an effort / proposal under the Councils Local Improvement Scheme for private lanes when same was proposed, and references that Sitka Spruce is not a native species. The applicant addressed the hearing and set out her reasons for the proposal and confirmed that the land had been leased firstly to one of the appellants (FAC 471/2019) and then to another appellant (FAC 470/2019). She said that she thought it best to plant the land when the current lease was up.

In response to questions at the oral hearing the DAFM representative advised that the proposal would be screened in for Appropriate Assessment if screened using the current DAFM process. The representative set out the position with regard to the aquatic feature on the site describing it as one that had a water flow in it for all of the year, set out the type of silt traps to be used in the proposal, advised that the soil is mineral and that the slope of the site generally is gentle / moderate. He confirmed that the public road at the location was adequate and that the references to the inadequacy of access as mentioned in the appeal grounds in his view related to the access lane. He also set out that the lane should be sufficient to facilitate the machinery necessary to plant the ground and that harvesting in due course could be facilitated by double handing of the timber and by use of plant of an appropriate scale and size which could operate on the laneway. This was disputed generally by the appellants. The DAFM representative also pointed out that the lane and issues arising from it was a matter for the applicant and those who have an interest in it. In relation to matters raised in the grounds regarding shading the DAFM representative confirmed that the processing of the licence was in accordance with the DAFM guidelines in this regard. In relation to the in-combination assessment of the project the DAFM representative advised that this was as referenced in the Appropriate Assessment forms on file. He also confirmed that the access to the northern plot is currently over a culvert on the stream which is used by machinery that has to access same at present.

The FAC considered the grounds relating to Environmental Impact Assessment (EIA). The EU EIA 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. 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. The proposal as described is for the afforestation of 11.2 ha. The proposal is considerably sub-threshold for the mandatory submission of an EIA report. The FAC found that the DAFM desk and field assessed the proposal and considered the application across a range of criteria, including water, designated areas, landscape and cumulative effects, and determined that the project was not required to undergo the EIA process. Regarding contentions raised with regard to the environment, the FAC reviewed the grounds submitted by all parties to the appeal. The proposal area is largely bounded by grassland and there is a mixture of land cover in the area, and the FAC does not consider that there is any evidence before it that this proposal would result in a significant effect on species in the area. The biomap identifies a watercourse on the site and some of the grounds relate to it and water quality. The publicly available EPA maps confirm the proposal area is in the Rag (Cavan)\_010 river waterbody, Woodford (Carn)\_SC\_010 subcatchment and Erne WFD catchment (ref #36). The Rag (Cavan)\_010 river waterbody has a poor WFD status (2013-2018), however the pressures identified in the 2<sup>nd</sup> cycle did not include forestry but included agriculture and other factors. The proposal is for no fertiliser or herbicide application and with the use of a culvert over the watercourse to access the plot to the north confirmed at the oral hearing by the DAFM representative. The licence also contains a specific condition regarding biodiversity and the watercourse as follows, to make the best use of biodiversity, increase watercourse setback to include low lying areas adjacent to the stream. Having regard to the record of the decision and the submitted grounds and the nature, scale and location of the proposal the FAC is satisfied that the proposal would not result in any likelihood of significant effects on water quality and is not satisfied that a serious or significant error or a series of errors occurred in the DAFM conclusion regarding EIA. The FAC is satisfied that an EIA was not required in this case.


In relation to the various grounds generally regarding the impact of the development on 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 addressed these matters, while contending that shading would be relatively consistent with existing hedgerow and trees and that the shed referred to in the grounds to the north is on more elevated ground than the proposal area. In relation to the grounds raised regarding the lane, the FAC, having considered the grounds submitted, and the elaborations made at oral hearing, agreed with the assertion made by the DAFM representative that issues regarding the lane are a matter for its owner(s) / and those who have rights of use of it. The FAC is not satisfied that a serious or significant error or a series of errors occurred in the DAFMs consideration of these grounds.

In relation to the Appropriate Assessment screening carried out in this case, the FAC finds that the DAFM in this case undertook a Stage 1 screening and found two European sites within 15 km of the proposal area, and that there was no reason to extend the zone of influence in this case. The sites identified were Lough Oughter and Associated Loughs SAC and Lough Oughter Complex SPA. The FAC

consulted publicly available information from the NPWS and EPA and identified the same two sites; Lough Oughter and Associated Loughs SAC and Lough Oughter Complex SPA at distances of c. 2.6km and c. 3.6km respectively. The DAFM considered each site in turn and listed the associated qualifying interests and conservation objectives and the reasons for their screening conclusions. The DAFM in screening out the Lough Oughter and Associated Loughs SAC for Appropriate Assessment gave their reasons as mandatory adherence to standard safeguards integral to the project, as set out in the application, and in published Forest Service guidelines, requirements and procedures, in particular Environmental Requirements for Afforestation. The DAFM in screening out the Lough Oughter Complex SPA for Appropriate Assessment gave their reasons as the unsuitability of the project area for use by any species listed as a qualifying interest of the Natura site. The DAFM in their statement to the FAC on appeal FAC 394/2019 and at the oral hearing stated due to their reliance on mitigation measures in the Appropriate Assessment screening, that this application would now currently be screened in and the application would continue to Appropriate Assessment. Having considered the content of the DAFM statement to it, the submissions made at oral hearing including that mitigation was taken into account in reaching a conclusion to screen out the project, the FAC concluded that a serious error occurred in the making of the decision regarding Appropriate Assessment screening in this case.

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 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 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