



[Redacted]

22<sup>nd</sup> September 2021

**Subject: Appeals FAC 851/2020 and 855/2020 regarding licence CN85351**

Dear [Redacted]

I refer to appeals made to the Forestry Appeals Committee (FAC) in relation to this decision 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 the parties to the appeal.

#### **Background**

Licence CN85351 is for the afforestation of 10.94 hectares at Halls, Co. Leitrim which was approved by the Department of Agriculture, Food and the Marine (DAFM) on the 5<sup>th</sup> November 2020 subject to conditions.

#### **Hearing**

A hearing of appeals FAC 851/2020 and FAC 855/2020 was conducted by a sub division of the FAC on 5<sup>th</sup> July, 2021. The FAC Members in attendance at the hearing were Mr. Myles Mac Donncadha (Chairperson), Mr. James Conway and Mr. Derek Daly.

#### **Decision**

Having regard to the evidence before it, including the record of the decision by the DAFM, the notice of appeal, and all submissions received, and, in particular, the following considerations, the FAC has decided to affirm the decision of the Minister regarding licence CN85351.

#### **Licence**

The licence pertains to the afforestation of 10.94 hectares at Halls, Co. Leitrim. The project area has two plots. In plot 1 which has an overall area of 10.37 hectares there is a species mix of 8.81 hectares of Sitka Spruce and 1.56 hectares of ADB. Plot 2 is proposed as a bio area and has an area of 0.57 hectares. The project site is within the River Sub Basin the RELAGH\_010 (River Waterbody status for the RELAGH\_010 is good for the 2013-18 assessment period) and the Cloone\_020 (Eiver Waterbody status for the

Cloone\_020 is good for the 2013 – 2018 assessment period) and in terms of risk both are indicated as not at risk.

The inspector certification refers to predominant soil type underlining the project area is predominantly podzols in nature. The slope is predominantly flat to moderate. The vegetation type(s) within the project area comprise grass/rush. Inspector Certification also refers to the project area is crossed by/adjoining an aquatic zone(s).

The licence application was referred to An Taisce who in a response dated 4th February 2020 referred to EIA Directive and that screening for sub-threshold development should have taken place. Where an application is made for sub-threshold development the competent authority shall carry out a preliminary examination taking into account the criteria set out in Annex III of the Directive and these are outlined in the submission. Reference is made to the level of forestry in the area and the issue of cumulative effects and that the level of forestry exceeds 50 hectares and nearly exceeds 200 hectares when all adjoining plots are considered. Reference is also made to the high level of Sitka Spruce in the county of Leitrim.

Leitrim County Council in two responses indicated no objections and provided conditions for inclusion. The application was referred to Inland Fisheries Ireland (IFI) and no response was received. The National Parks and Wildlife Service (NPWS) in a response had no comments to make. A number of third party submissions were also made to the Forestry Service.

An Appropriate Assessment screening was carried out by DAFM and recorded on the file. Two Natura 2000 sites were found to be within 15kms of the project site namely Cuilcagh - Anierin Uplands SAC 000584 which was screened out due to the position of the project area downstream from the Natura site, and the subsequent lack of any hydrological connection and Lough Oughter And Associated Loughs SAC 000007 which screened out due to the location of the project area within a separate water body catchment to that containing the Natura site, with no upstream connection, and the subsequent lack of any hydrological connection. The overall screening conclusion was that there was no likelihood of a significant effect on any European site, and Appropriate Assessment was not required.

In-combination assessments dated with a reference to the week of 29<sup>th</sup> October 2020 are on the file. Section 1.1.5 indicates Forestry projects in the general vicinity of the project The report concludes determining no effects on any Natura site.

The licence was issued on the 5<sup>th</sup> November 2020 subject to conditions.

## **Appeal**

There are two appeals against the decision to grant the licence.

The grounds of appeal in relation to FAC 851/2020 contend that the land if planted will cast a shadowing effect on the appellant's lands as the project site is to the south and west of his farm and will have a significant impact when the trees grow tall. The 5m setback from the relevant watercourses is not enough to facilitate machinery working and will impact on watercourses and impact on water quality with silt discharge. Reference is made to the impact of the scale of forestry on the local community and that the scale of forestry is to the detriment of farming and the local population and reference is also made to the impact of forestry on water quality, it is an emitter of carbon into the atmosphere and on

the condition of roads in the area. An additional submission by the appellant refers to the scale of forestry in the townland and difficulties for farmers in acquiring land area, that if the land is planted it will cast a shadowing effect on two meadows which he depends on for fodder for his animals. The foreign conifer species are acidifying waterways, killing soils, stunting bio-diversity and polluted streams have an adverse impact on lake water quality.

The grounds of appeal in relation to FAC 855/2020 contend that the decision is in breach of Section 11 (a) and (d)(iv) of the Forestry Act 2014 as the Minister has not taken full consideration in relation to the protection of the environment. The decision is not consistent with State Aid Decisions referring in particular to paragraphs 34,36 and 40. The EIA Screening Determination has not referenced all relevant criteria set out in Annex III and the EIA Screening is flawed as cumulative effects is not considered. Reference is made to the scale of Sitka Spruce planting in the townland of Halls with over 70 hectares in a townland which has an area of 175 hectares. Concern is raised in relation to the absence of a response from Fisheries in the context of cumulative effect of forestry in the area on fish stocks. There is a failure to recognise the impact of forestry among the community and reference is made to the response to Q11 in this regard. There is an absence of concern in relation to loss of biodiversity. Reference is made to the absence of firebreaks.

In a statement to the FAC, the DAFM indicated that the decision was issued in accordance with their procedures, S.I. 191/2017 and the 2014 Forestry Act. The Statement from Inspectorate indicates that the application was field and desk assessed by the DAFM. All paperwork and submissions were reviewed in detail. The application was deemed to meet all eligibility criteria as required under the Afforestation scheme. An AA screening was carried out as per procedures and all Natura 2000 sites were screened out using the Habitat and Foraging guidance documents. This information and rationale for screening out is on file. An in-combination assessment was also carried out as part of this for forest and non-forest plans and projects in the area. It was found that the proposal alone or in-combination will not have a significant impact on any of the Natura 2000 sites outlined or beyond. The site was marked for inspection at 1<sup>st</sup> instalment stage to ensure regulatory compliance with all scheme requirements.

In addressing the grounds of appeal, the FAC considered the requirements of the Habitats and EIA Directives, the completeness of the assessment of the licence application, whether there was an adequate assessment of cumulative effects and an examination of the procedures applied which led to the decision to grant the licence.

In considering the appeal the FAC noted that the EU EIA Directive sets out in Annex I, a list of projects for which EIA is mandatory and that 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 Forestry Regulations 2017, in relation to forestry licence applications, require the compliance with the EIA process for applications relating to afforestation which involve 50 hectares or more and 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 is for the afforestation of an area of 10.94 hectares,

which is significantly sub-threshold for mandatory environmental impact assessment (EIA), as set in Irish Regulations.

As outlined in their statement to the FAC, the DAFM findings and conclusions are informed by documentation, reports and materials submitted by the applicant and by responses received including An Taisce and Leitrim County Council and NPWS. It is noted that Leitrim County Council in their responses to the DAFM indicated no objections to the proposal and that the area is designated as having high capacity for forestry. DAFM submits that this information and their consideration of same was sufficient for the purposes of identifying the relevant criteria in Annex III of the Habitats Directive (and Schedule 3 of the Forestry regulations 2017) and supports the reasoned conclusion by the inspector that no EIA was required in this case. The FAC is satisfied that the DAFM did not err in the decision regarding EIA, that the proposal was not required to undergo the EIA process.

In considering the appeal the FAC examined the Appropriate Assessment Screening undertaken by the DAFM as it related to the afforestation of 10.94 hectares. The FAC examined publicly available information from the EPA and NPWS and identified the same two sites as the DAFM within 15km from the proposal and the FAC is satisfied that there was no need to extend the radius in this case. The FAC considered the nature, scale and location of the proposal, the European sites identified, and their conservation objectives and the reasons provided by the DAFM for screening them out. The DAFM considered each site in turn and provided the reasons for screening all the sites out for Appropriate Assessment. Details of other plans and projects were also examined. The proposed works are located outside of any European site and there is no evidence of a pathway of effects to a European site. Neither is there evidence of protected habitats or species on the site. The FAC is satisfied that the DAFM did not make any serious or significant error in their decision regarding Appropriate Assessment and concurs with the conclusions reached.

In relation to potential hydrological impacts on Natura 2000 sites and on water quality generally it is noted that there is a watercourse located along the western section of the northern and the western boundary and is identified on the biomap (15 10 2020) submitted with the application with provision for a setback of 10 metres with 20% setback planting. There is also reference to a relevant watercourse on this map with provision for a 5 metres setback for a relevant watercourse. The FAC examined this issue and from an assessment of the topography of the site and the pattern of contours and slopes and also historical mapping and aerial imagery of the area a watercourse is identified which runs along the northern boundary following the townland boundary and also part or all of the eastern boundary. Subject to compliance with appropriate setbacks from the identified watercourses the FAC concluded and is satisfied based on the submissions received that the proposed project will not impact on receiving waters.

In relation other issues raised in the grounds of appeal the FAC considered the specific grounds of appeal with regard to any potential adverse impacts on farming of adjoining lands arising from shading with loss of grass growth and loss of agricultural productivity. The lands in question appear to be to the north and east of the proposed forestry. It is noted that the FAC in reviewing the licence and the

documentation submitted that a 5 metre setback is proposed along a 350 metre section of the northern and eastern boundaries where a relevant watercourse is identified and indicated on the revised biomap 15 10 2020 which complies with forestry standards along such identified watercourses. Although the appellant's concerns as stated in the grounds of appeal are noted in relation to the potential impacts of increased shading and impact on grass growth there is no error in relation to the setback as proposed.

Regarding the general impact on fish stocks and biodiversity the lands are said to be in use for agriculture with grass/rush vegetation. The DAFM referred the application to the Shannon Regional Fisheries Board, but no response is on file, and the status of the associated EPA mapped river waterbodies is said to be good and in terms of risk is indicated as not at risk. The requirement of setbacks from watercourses and the implementation of the Environmental Requirements for Afforestation and the Forestry Standards Manual and guidelines as specified in the conditions of the licence it is considered will address concerns in relation potential impacts on receiving waters and the FAC is satisfied that the decision to approve the proposal does not represent an error in this regard.

With respect to firebreaks, these are normally required to form a buffer between high risk habitat such as bogland, rather than forests and as such were deemed not to be required.

With regard to the cumulative impact of further afforestation in this area, the FAC finds the Halls townland is 175 hectares in area and per the DAFM Inspector Certification the forest cover is 38.11% in the townland. It is also noted as indicated the response of Leitrim County Council that the site is located within an area of landscape capacity to accommodate high capacity of forestry. Given the scale, location and nature of the proposed development; the basis of the Inspectors reasoning for EIA; the conclusions reached in relation to the consideration of in-combination effects and the adherence to standards and guidelines the FAC concludes no serious error was made by DAFM in their decision in the context of this ground of appeal.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal, and other submissions received. The FAC is not satisfied that a serious or significant error or a series of errors was made in making the decision and neither that the decision was made without complying with fair procedure. The FAC is thus affirming the decision of the Minister regarding licence CN85351 in line with Article 14B of the Agricultural Appeals Act 2001, as amended. In deciding to affirm the decision, the FAC considered that the proposed development would be consistent with Government policy and Good Forestry Practice.

Yours sincerely,



---

Derek Daly On Behalf of the Forestry Appeals Committee

