



[REDACTED]

23 September 2021

**Subject: Appeal FAC 854/2020 in relation to licence CN85433**

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.

The FAC established in accordance with Section 14 A (1) of the Agriculture Appeals Act 2001, as amended, has now completed an examination of the facts and evidence provided by the parties to the appeal.

#### **Background**

A licence for afforestation of 2.01 ha. at Halls, Co. Leitrim was approved by the Department of Agriculture, Food and the Marine (DAFM) on 4<sup>th</sup> November, 2020.

#### **Hearing**

A hearing of your appeal in this case (854/2020) was conducted by the FAC on 5<sup>th</sup> July, 2021.

#### **FAC Members:**

Mr. Myles Mac Donncadha (Chairperson), Mr. James Conway and Mr. Derek Daly.

#### **Decision**

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notice of appeal, submissions made prior to the hearing and all other submissions received, and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to affirm the decision regarding licence CN85433.

The proposal is for afforestation of 2.01 hectares with Sitka spruce (85%) and Additional Broadleaves (15%) in Halls, Mohill, Co. Leitrim. Ground preparation would comprise mounding with slit planting, fertilisation at the rate of 250kg Granulated Rock Phosphate per hectare and manual weed control in year one.

The site is described in the Inspectors Certification as having a predominantly podzolic soil type, being flat to moderate in slope (<15%) and not adjoining or containing any aquatic zones. The vegetation type within the project area is said to comprise grass/rush. The project is located in Catchment 26C Upper Shannon, Sub-Catchment Cloone (LoughRinn)\_SC\_010 and Relagh\_010 River Sub-Basin (ID IE\_SH\_26R050900), for which the WFD 2013-2018 status is recorded as 'Good'.

The application was referred to Leitrim County Council, Shannon Fisheries and An Taisce. Replies were received from Leitrim County Council (Planning Section & South Leitrim Area Office) indicating no objection to the proposal subject to conditions. An Taisce also replied indicating concern regarding cumulative effects. No reply is on file from Shannon Regional Fisheries Board.

The DAFM undertook a screening of the proposal for Appropriate Assessment and found that there was one Natura 2000 site (Cuicagh-Anieran SAC 000584) within 15km of the proposed project area and that there was no reason to extend the radius in this case. An in-Combination Assessment was carried out dated as having reviewed online planning systems and records on the week of 29<sup>th</sup> October, 2020. The Natura 2000 site was considered in terms of its Qualifying Interests and was screened out for the purposes of Appropriate Assessment on the basis that there are no aquatic zones or significant relevant watercourses within or adjoining the project area. The DAFM considered the environmental effects of the proposal across a range of criteria and determined that the project was not required to undergo the Environmental Impact Assessment (EIA) process. The licence was approved on 4<sup>th</sup> November, 2020 with four additional conditions of a general nature.

There is one appeal against the decision to grant the licence and the grounds include a breach of Section 11 (a) and d (iv) of the Forestry Act 2014 in terms of lack of regard to the social, economic and environmental functions of forestry and failure in conducting screening and assessments relating to the EIA and Habitats Directives; failure to observe State Aid Decision paragraphs relating to the safeguarding of environment in the course of administering afforestation schemes; Environmental Impact Assessment screening determination has not referenced all of the relevant criteria set out in Annex III and referred to under Article 4 (3) of the EIA Directive, as amended (2014/52/EU), thus invalidating the EIA screening determination; no consideration was given to the cumulative effect of this application in combination with all other industrial plantations which may have a negative impact on the European sites listed and on the fish stocks in the area; road access is said to be provided but this is not the case; the Forest Inspector (in question 11 of the inspectors certification) continues to misinform the Forest Service and the Minister of the fact that forest cover is a significant issue in the townlands of Halls and across all of County Leitrim. The Inspector fails to recognise that over 40% of Leitrim's available land is afforested with over 30,000 hectares of industrial monoculture plantations. It is blatantly obvious that the Inspector has no



understanding of the cumulative effects of afforestation and the negative impact it is having on our communities, our culture, our natural and built heritage, our water bodies and our biodiversity; the Government recognises that we are in a biodiversity crisis but the Forest Inspector continues to ignore this crisis and sanctions the further destruction of the depleted High Nature Value lands at Halls with the continued loss of biodiversity, water pollution and damage to the ecosystems of the stream and all water bodies which it is hydrologically connected to; firebreaks are not required by the Forest Inspector and possibly no fire plan either, even though this development is adjacent to a significant Sitka plantation and being mindful of the fact that hundreds of acres of forestry burned in Leitrim last April. The amount of afforestation in close proximity to villages, towns, rural settlements, homes and farmyards is becoming a serious issue for the people of Leitrim and this has not been addressed by the inspector.

The DAFM responded to the grounds of appeal stating that the licence application was issued according to their procedures; SI 191 of 2017 and the Forestry Act 2014, and that all relevant criteria were adhered to in making the decision.

In addressing the grounds of appeal, the FAC considered, in the first instance, the contention that the decision by DAFM constituted a breach of the Forestry Act 2014 in that the proposed development should have undergone an Appropriate Assessment. Under Article 6(3) of the Habitats Directive, any plan or project not directly connected with or necessary to the management of a European site, must be subject to an assessment of the likely significant effects the project may have on such a designated site, either individually or in combination with other plans projects, having regard to the conservation objectives of that designated site. In this case, the DAFM undertook a Stage 1 Appropriate Assessment screening, and found one Natura 2000 site (Cuicagh-Anieran SAC 000584) within 15 km of the proposal area, and that there was no reason to extend the zone of influence in this case. The DAFM considered the qualifying interests associated with the site and the reasons for their conclusion to screen it out. The DAFM also undertook and recorded a consideration of other plans and projects, including forestry and non-forestry projects, and they concluded that the project, when considered in combination with other plans and projects, will not give rise to the possibility of a significant effect on any Natura site. The FAC consulted publicly available information from the NPWS and EPA and identified the same site within a 15km radius and concurs with the DAFM decision to screen out Cuicagh-Anieran SAC for Appropriate Assessment. In addition, the FAC having considered the available evidence, is satisfied that no likelihood of significant effects arise from the proposal itself or in combination with other plans and projects, due to the size, nature and location of the proposal and having regard to other plans and projects. The procedures adopted by the DAFM in their assessment are considered to be acceptable. In considering all the evidence before it the FAC is not satisfied that a serious or significant error or series of errors was made in the making of the decision regarding Appropriate Assessment and concurs with the conclusions provided.

In addressing the grounds of appeal that the cumulative effect of afforestation warranted an EIA in this case, the FAC considered, in the first instance, the EU Directive. Annex I sets out 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. Neither afforestation nor deforestation (nor clear-felling) are referred to in Annex I. Annex II contains a class of project specified as

"initial afforestation and deforestation for the purpose of conversion to another type of land use" (Class 1 (d) of Annex II). 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 decision under appeal relates to a licence for the afforestation of an area of 2.01 hectares, so 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 consultees including An Taisce and Leitrim County Council (there being no reply from Shannon Regional Fisheries Board). The Leitrim County Council reply to DAFM states 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.

Regarding the grounds of appeal relating to road access this appears to be secured by way of an adjoining afforestation proposal for which approval has already been granted. 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. Regarding the general impact on fish stocks and biodiversity the lands are said to be in use for agriculture with poaching of the ground and predominance of rush vegetation. There was no response on file from Shannon Regional Fisheries Board and the status of the waterbodies is said to be good and will not be negatively impacted by this relatively small development for which no on-site aquatic zones or relevant watercourses were identified. The FAC is satisfied that the decision to approve the proposal does not represent an error with respect to these issues.

With regard to the cumulative impact of further afforestation in this area, the FAC finds the Halls townland is 175 hectares in size and per the DAFM submission to the FAC the forest cover is 38.11% and 16.88% in the overall waterbody. Given the scale, location and nature of the proposed development; the basis of the Inspectors reasoning for EIA; the balancing of social, economic and environmental aspects; and the adherence to standards and guidelines (including the four added licence conditions) the FAC sees no error in concluding that the proposal could be approved. Based on the information available to it the FAC is not satisfied that the DAFM erred in its processing of the licence as it relates to this ground of appeal. Regarding the grounds of appeal relating to state aid for afforestation these are outside the remit of the FAC.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal. The FAC is not satisfied that a serious or significant error or a series of errors was made in making the decision or that the decision was made without complying with fair procedure. The FAC in deciding to affirm the decision, considered that the proposed development would be consistent with Government policy and Good Forestry Practice.

Yours sincerely

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Mr. Myles Mac Donncadha (on behalf of the FAC)

