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22 September 2021

**Subject:** Appeal FAC 054/2021 regarding Licence CN86305

Dear [REDACTED]

I refer to the appeal 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 CN86305 for afforestation of 13.13ha, in Blackgardens, Co Leitrim was approved by the Department of Agriculture, Food and the Marine (DAFM) on 17 February 2021.

#### **Hearing**

A hearing of appeal FAC 054/2021 of which all parties were notified, was held by a division of the FAC on 9 September 2021.

#### **Presiding:**

FAC Members: Mr Des Johnson (Chairperson), Mr Luke Sweetman and Mr Seamus Neely

#### **Decision**

The Forestry Appeals Committee (FAC) considered all of the documentation on the file, including application details, processing of the application by the DAFM and the grounds of appeal and all other submissions, before deciding to set aside the decision to approve the licence (Reference CN 86305).

The proposal is for afforestation on a stated site area of 13.13ha and 560m fencing at Blackgardens, Co. Leitrim. The project lands are in two plots, with plot 1 (12.49ha) to be planted with 85% Sitka spruce and 15% ADB, and plot 2 (0.64ha) is approved as GPC3/Conifer High Forest but with no species details specified. Soils are predominantly podzols in nature and the slope is predominantly flat to moderate. The project lands do not contain or adjoin an aquatic zone. The ground cover on the project lands comprises Grass/Rush. The proposal is within the Sligo Bay 35 catchment, the Bonet\_SC\_020 Sub-catchment, and the Bonet\_050 Waterbody/River Sub-Basin (Moderate status, Not at Risk and Not

under pressure). Ground preparation includes mounding, there would be manual weed control, and 250kg/ha GRP fertiliser is proposed. Slit planting method would be used.

The DAFM referred the application to Leitrim County Council and the DAFM Archaeologist. There are two responses from the County Council. A Senior Executive Engineer states that the Local Authority was not consulted by the developer prior to the making of the application. The Forestry Standards Manual requires a 60m setback from dwellings and associated buildings, and 15m from internal roads. Forestry and Water Quality Guidelines require a 15m setback from a watercourse in peat soils areas. The 6" Map shows a Turlough – "Blackgardens Lough" – adjoining the proposal. The Bio Map is poor and Forest Service standards are not met. There are safety concerns as the proposal accesses onto the strategic Regional Road R280, which has poor horizontal alignment at this point, and increased traffic movements from the access point onto the R280 would give rise to considerable public safety concerns and a significant traffic hazard for all road users. It is not recommended that the afforestation licence be approved. A second County Council response objects on traffic safety grounds as the sightlines on the R280 are substandard. Appropriate Assessment and EIA requirements should be met. Conditions are recommended in the event that the licence is granted requiring consultation with the District Engineer, bonding against road damage, notification before the commencement of operations, and Best Practice Guidelines to be followed. The DAFM Archaeologist reports that the site does not contain any Recorded Monuments, but there is a cluster of monuments 25m north of Plot 2. Historic maps show historic farmyards within the site and aerial photographs indicate that these structures may survive in whole or in part. Every effort should be made to avoid damage to the nearby Recorded Monuments and the historic farmyards. The report lists 5 conditions to be adhered to during operations.

The Inspector's Certification states that the site is free of shell marl or highly calcareous soils, is not prone to flooding, is not acid sensitive or sensitive to fisheries, and is not within a Freshwater Pearl Mussel 6km zone or catchment. The site contains or adjoins a listed archaeological site or monument, is not within a Prime Scenic Area as per the County Development Plan but is listed as landscape with capacity to accommodate forestry. The percentage forest cover in the townland is zero, within 5km is 27.97 percent, and in the underlining waterbody is 11.99 percent. A Stage 1 screening for Appropriate Assessment identifies sites within a radius of 15km of the project lands. The Arroo Mountain SAC, Ben Bulbin and Glenade Complex SAC, Boleybrack Mountain SAC, Cuilcagh-Anierin Uplands SAC, and Glenade Lough SAC are screened out for reason that the location of the project area is within a separate waterbody catchment to that containing the Natura 2000 sites, with no upstream connection and subsequent lack of any hydrological connection. Lough Gill SAC is screened out for reasons of the absence of any aquatic zone within or adjoining the project lands, and the absence of any relevant watercourse(s) within or adjoining the project lands.

An In-combination Report, based on information gathered on 16.02.2021, is focused on the River Sub-Basin Bonet\_050. Non forestry projects listed include wind turbines (4), and two wastewater licences. Forestry related projects include nine afforestation licences from 2017-2020 (totalling 133.06ha), five forest roads from 2018-2019 with total forest road length of 2016m, thirteen private felling licences from 2017-2020 (totalling c.180ha) and two Coillte clearfelling licences (5,24ha) and thirteen thinning licences from 2018-2019 (totalling c,192ha). The report states that the River Sub-Basin Bonet\_050 has approximately 27% forest cover.

The licence issued on 17.02.2021 and is subject to standard conditions, with additional specific conditions relating to archaeology, landscaping, and adherence to specified guidelines.

There is a single appeal against the decision to grant the licence. The grounds of appeal contend that the proposal should have been referred to the National Parks and Wildlife Service (NPWS), and the area is important for the Hen Harrier. The Appropriate Assessment screening results are flawed as the site is hydrologically connected to Lough Gill SAC through a stream and turlough, known as Blackgardens Lough and the River Bonet. The site is within the Zone of influence of designated European sites. The EPA should have been consulted as there is a potential negative impact on Lough Gill which already has 'Poor' status and is the water source for Sligo Town and environs and parts of north Leitrim. It is an aim of the Water Framework Directive (WFD) to ensure that waters achieve at least 'Good' status by 2021 and that status does not deteriorate in any waters. The County Council have serious concerns for public safety at the proposed access point and recommend that the licence not be approved. The right of way is through other people's land for agricultural use and not commercial forestry and written assurances should have been sought prior to granting the licence. The social and economic benefits to the local community to keep this land in agriculture outweigh the negative impact of Sitka spruce afforestation. The proposal should be considered in combination with CN 85697 for cumulative impacts.

In response, the DAFM state that both field and desk inspections were carried out and all criteria adhered to in the making of the decision to grant the licence.

A hearing of the appeal was held on 09.09.2021, and all submissions were considered. The project lands lie a short distance to the east of the R280. The lands comprise irregular shaped fields in agricultural use and are elevated relative to the R280. Access to the project lands is via a narrow road off the R280 and at right angles to the regional road. There is a two-storey dwelling at the junction of the two roads which is approximately 100m to the south of a sharp bend in the regional road. There is extensive forestry in the wider area, including an existing plantation adjoining to the north of the application site. There is a sizeable quarry to the south west on the opposite side of the R280. Reference to the EPA website confirmed that there are 5 Natura 2000 sites within a 15km radius of the project lands – Lough Gill SAC (c.2800m direct separation), Boleybrack Mountain SAC (c.3100m direct separation), Arroo Mountain SAC (c.13200m direct separation), Ben Bulbin, Gleniff and Glenade Complex SAC (c.13800m direct separation), and Glenade Lough SAC (C,14900m direct separation). The appellant contends that there is a hydrological link between the project lands and Lough Gill. The FAC noted that the submitted BioMap indicates an aquatic zone along the southern boundary of the application site and a relevant watercourse in the north-western portion of the site. Reference to the publicly available EPA website, shows a watercourse along the southern boundary of the project lands which crosses under the R280, and runs along the boundary of a quarry before joining the Orcusconny (Order 1) stream. The Orcusconny flows in a westerly direction, eventually entering Lough Gill. The hydrological distance from the project lands to the Orcusconny is approximately 900m, and the hydrological distance from the easternmost end of the Orcusconny to Lough Gill is approximately 4415m downstream. The FAC noted that the DAFM screening for Appropriate Assessment was based on the absence of a hydrological connection to any European site, but that publicly available information indicates a hydrological link to Lough Gill SAC, albeit at a hydrological distance in excess of 5000m. There is no hydrological connection to the other listed

Natura 2000 sites. The FAC concluded that the DAFM had made a significant error in its screening exercise for Appropriate Assessment by not identifying the hydrological link to Lough Gill SAC.

The appellants contend that the proposed development would have a potential negative impact on the water quality in Lough Gill, which is a public water supply for Sligo Town and environs and parts of north Leitrim. Having regard to the nature and scale of the proposed development, the nature of hydrology in the area, and to the hydrological separation distance to Lough Gill, the FAC concluded that the approved development would not have a negative impact on water quality in the area of the site or in Lough Gill.

The appellants contend that the social and economic benefits for the local community to keep this land in agriculture outweigh the negative impacts of Sitka spruce afforestation. The FAC considered that the proposed development is not inconsistent with national policy in respect of afforestation and that the Inspector's Certification records that the lands are listed in the County Development Plan as being in a landscape with capacity to accommodate forestry. Having regard to this background, the FAC found reason no conclude that there was any significant or serious error made in the decision to grant the licence in respect of this issue.

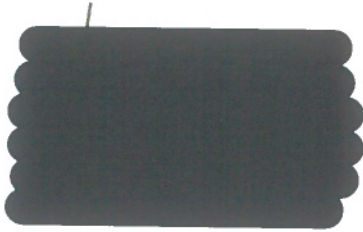
The appellants contend that the area is important for the Hen Harrier but have not substantiated this contention. The FAC noted that the project lands are not designated for conservation purposes and are not adjoining or adjacent any designated site for with the Hen Harrier is a special conservation interest. In these circumstances the FAC found no reason to conclude that there was any significant or serious error in the making of the decision in respect of this issue.

The issue of access is raised in both the County Council referral responses and by the appellants. Leitrim County Council Senior Executive Engineer does not recommend approval of the licence concluding that there would be significant public safety concerns and a significant traffic hazard for all road users arising from the proposed development. A second referral response from the County Council also objects on traffic safety grounds stating that sightlines on the R280 are substandard, but recommends conditions be attached to the licence if granted. The FAC noted that there are no such conditions attached to the licence. The only viable existing access to the project lands, which are currently in agricultural use, appears to be along a narrow access road off the R280. The sightlines at the right-angled junction with the R280 are restricted and sub-standard in both directions. There are no significant hard shoulders along this stretch of the R280 and there is a continuous white line along the centre of the carriageway. The R280 is sub-standard in its horizontal alignment with a sharp right-angled bend to the north of the minor road junction. The speed limit along this stretch of the regional road is 80kph. In assessing the adequacy of the access for the proposed development, the FAC considered the various stages of the development – planting, management, felling and restocking, the scale of the proposed development, the intensification of traffic turning movements which could reasonably be expected to be generated at the sub-standard junction with the R280, the substandard alignment of the R280 along this stretch, the substandard sightlines at the junction with the R280, and the absence of any traffic management proposals for peak periods of forestry operations, and is not satisfied that the proposed development would not endanger public safety by reason of traffic hazard and obstruction of road users. The FAC concluded that there was a significant and serious error made

in the decision to grant the licence due to an inadequate consideration of the adequacy of the access arrangements which would be operable over the lifetime of the afforestation.

In concluding that significant and serious errors were made in the making of the decision in regard to the basis for the screening for Appropriate Assessment, and the adequacy of the access to service the proposed development, the FAC decided to set aside the decision of the Minister in respect of CN 86305.

Yours sincerely

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Des Johnson on behalf of the Forestry Appeals Committee

