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21st September 2021

Subject: Appeals FAC 058 - 065/2021 regarding licence CN86696

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 as amended, has now completed an examination of the facts and evidence provided by all parties to the appeal.

Background and Hearing

Licence CN86696 for afforestation of 13.12 ha at Greaghaguillaun, Sradrinagh, Co. Leitrim, was approved by the Department of Agriculture, Food and the Marine (DAFM) on 25th February 2021. A hearing of appeals FAC 058 – 065/2021 was held by a division of the FAC on 9th September 2021. The FAC members in attendance at the hearing were Mr. Des Johnson (Chairperson), Mr. Luke Sweetman and Mr. Seamus Neely. The secretary to the FAC was Mr. Michael Ryan

Decision

Having regard to the evidence before it, including the licence application, processing by the DAFM, the grounds of appeal, and all submissions received, the Forestry Appeals Committee (FAC) has decided to vary the decision regarding licence CN86696.

The licence decision in this case pertains to the afforestation of lands on a stated site area of 13.12 ha at Greaghaguillaun, Sradrinagh, Leitrim. The proposal is for the planting of Native species with plot 3 (970) being proposed as bio. The land is described in the Appropriate Assessment screening documentation (contained in the Inspector's Certification on file) as having a slope which is predominantly steep (15 to 30%) and that the project area is crossed by / adjoins an aquatic zone(s), has a soil type that is predominantly podzolic in nature and has vegetation comprising improved grasslands, wet grasslands and hedgerows. The project is located in the STONY_010 Sub Basin and the waterbody has an unassigned status for the 2013-18 Water Framework Directive assessment period.

The application was not referred to any of the referral bodies. The Inspector's Certification noted that the application was desk and field (04/01/2021) assessed, that the site is not acid sensitive, is not within a

Fresh Water Pearl Mussel (FWPM) zone or catchment, is not sensitive to fisheries, is not within a hen harrier zone, and that there are no archaeological sites or features on the project lands. Drainage is not required, and road access is provided. There is said to be approximately 5.94% forest cover within 5kms, no forestry within the same townland, no impact on any Way-Marked Way, no impact on any densely populated area, and that the area is not commonly used by the general public for recreation.

Appropriate Assessment

The DAFM carried out an Appropriate Assessment Screening and identified two sites (Boleybrack Mountain SAC 002032 and Cuilcagh - Anierin Uplands SAC) within 15km of the proposal. Both of these Natura 2000 sites are screened out and the reasons for the screening conclusions reached for each site are set out in the documentation contained within the Inspectors report on file. An In-Combination report dated 23rd February 2021 is to be found on file. It sets out that various online planning systems and datasets (including DAFM's own internal records) were consulted on the 23/02/2021 in relation to other plans and projects, focusing on the general vicinity of the project area in the River Sub-Basin's Shannon (Upper)_040 and Stony_010. It lists planning approvals from the County Council website, indicates that no data was found on the An Bord Pleanála website and lists licences from the EPA website. It also lists Objectives relating to Natura 2000 sites as set out within Leitrim County Development Plan 2015-2021 that were consulted. It lists data from DAFM's internal records which identified various forestry-related projects (either submitted and still under evaluation, with valid licences / approval in place or completed and approved) in the general vicinity of the project including private and Coillte projects. The report sets out that the DAFM excludes the likelihood of this project, either individually or in combination with other plans and projects, having a significant effect on the screened European sites in relation to CN86696.

The Appeals

There are eight third party appeals against the decision to approve the licence. The full grounds of appeal in the case of the eight appeals submitted (including any related correspondence) is to be found on file and has been fully considered by the FAC.

The appeal in the case of FAC 058/2021 submits grounds that include reference to impacts on beautiful views, devaluation of appellant's adjoining lands (FAC 058), blocking of light and sunshine, contention that a small adjoining river will be contaminated, submission of a negative impact on the environment and local farms, submission that the 'document of Application is incomplete and incorrect', submission that the application documentation does not comply with legal requirements and not including a biodiversity map, submission that the proposal is upstream of a pNHA and is incorrectly ticked (on file), submission that the plots are fragmented and not economically viable, submits that the forestry will have a big impact on the local community and future of farming in the area, and submits (that the project will have) a very negative visual impact on residence and local area.

The appeal in the case of FAC 059/2021 submits grounds that include that appellant doesn't want forestry blocking views, that the 'document of Application is incomplete and incorrect', that it (application) does

not comply with legal requirements and not including a biodiversity map, that the proposal is upstream of a pNHA and is incorrectly ticked (on file), that the plots are fragmented and not economically viable, that the forestry will have a big impact on the local community and future of farming in the area, that there is forestry in the townland which is incorrectly ticked, that there will be a very negative visual impact on residence and local area, that there will be impacts on Leitrim Way walking route and Kingfisher cycling route and tourism, that there will be a very negative impact on the productivity of the adjoining farm, contention that the adjoining land will be wetter and darker affecting economic output, references societal challenges that affect Leitrim, and submission that Plots are very close to streams and rivers causing pollution and disruption to natural habitat and wildlife.

The appeal in the case of FAC 060/2021 submits grounds that include that the 'document of Application is incomplete and incorrect' and contention that this makes the application invalid, submission that the plantation will have a big impact on the local community and future of farming in the area, that the project will have a very negative visual impact on residence and whole scenic area, that plots are very close to streams and rivers causing pollution and disruption to natural habitat and wildlife, that the project will have a very negative impact on the productivity of the adjoining farm leaving the land wetter and darker because of shadowing, that the project will impact on the Leitrim Way walking route and Kingfisher cycling trail, that the proposal is upstream of a pNHA and is incorrectly ticked (on file), that the plots are fragmented and not economically viable, that there is forestry in the townland which is incorrectly ticked (on file), and references societal challenges that affect Leitrim.

The appeal in the case of FAC 061/2021 submits grounds that include that the proposal is only 55 m from rear of a house and farm sheds, that the area is a SAC and NHA, blocking of light from dwelling and farm, contention that the 'document of Application is incomplete and incorrect' and that it does not comply with legal requirements and not including a biodiversity map, that the proposal is upstream of a pNHA and is incorrectly ticked (on file), that the plots are fragmented and are not economically viable, that the forestry will have a big impact on the local community and future of farming in the area, that there is forestry in the townland which is incorrectly ticked (on file), that the proposal will have a very negative visual impact on residence and local area, that the proposal will impact on Leitrim Way and Kingfisher cycling route and tourism, that the proposal will have a very negative impact on the productivity of the adjoining farm leaving the land wetter and darker affecting economic output, references societal challenges that affect Leitrim, and submission that Plots are very close to streams and rivers causing pollution and disruption to natural habitat and wildlife.

The appeal in the case of FAC 062/2021 submits grounds that include concerns that strong local objections were ignored, concerns that the proposal in combination with others around Lough Allen will have a detrimental impact on the social and economic sustainability of the communities, references a failure to recognise proximity to pNHA, submission that there is a hydrological connection to a screened out Natura 2000 site, submission of concerns with regard to Appropriate Assessment, contention that the application should have been referred to EPA, and submission that waterbody Stony_010 is not assigned a status in the 2nd cycle of the EPA Water Framework Directive assessment process.

The appeal in the case of FAC 063/2021 submits grounds that include that the application is incomplete and incorrect and does not comply with legal requirements, that there will be a negative impact on the area and on tourism, that there will be a very negative impact on the appellant's nearby farm and farming, that the proposal will be close to walking trails and will block view from house, that the project will turn families away from area, that the proposal will be a fire hazard to sheds and mothers house, that plots are too close to rivers and raises shadowing of adjoining farms, references societal challenges that affect Leitrim, and contention that road access is inadequate.

The appeal in the case of FAC 064/2021 submits grounds that include that he (appellant 064) is seeking Planning for a house and that the forestry will run not more than 60m from it, raises blocking of view, that forestry will run along their other land and block light and affect growth, references an error in ticking 'no other forestry in townland' and includes a document listing grounds similar to the other appeals on file.

The appeal in the case of FAC 065/2021 submits grounds that include that the 'document of Application is incomplete and incorrect', that it does not comply with legal requirements and not including a biodiversity map and is invalid, contention that there are errors in certification regarding acid sensitivity, submission regarding error showing water abstraction information, submission that there is an error in cert regarding location (of proposal) relative to pNHA, submission that maps supplied to objectors don't meet DAFM requirements, submission that there is an error showing that Local Authority input was sought, submission of visual impact and impacts on Leitrim Way walking route and Kingfisher cycling route and tourism, submission of a detrimental impact on farming, and reference to societal challenges that affect Leitrim.

DAFM Statements to the FAC

The DAFM provided a statement to the FAC in respect of each of the eight appeals. Each statement sets out that the decision was issued in accordance with DAFM procedures, SI 191/2017 and the 2014 Forestry Act. The statements also set out the dates regarding the processing of the application, the date of field inspection, the number of submissions received and a summary reference regarding Appropriate Assessment. The statements included commentary on specific matters raised in the grounds as follows;

" Dwellings and Buildings

The effects of CN86696 on surrounding residences and buildings were considered during Field Inspection. Afforestation will adhere to Landscape Guidelines and Setbacks highlighted in Table 5 of Environmental Requirements for Afforestation.

Acid Sensitivity

Water sampling under the Acid Sensitivity Protocol for Afforestation is not required for afforestation applications within acid sensitive areas that comprise Native Woodland Establishment Grant & Premium Categories (GPCs) 9 and 10. This amendment to the protocol, agreed with the Environmental Protection Agency (EPA) (see Forest Service Circular 4 of 2013), is limited to applications that comprise solely of NWS Est. GPC 9 and / or GPC 10 (plus ABEs, as required) on enclosed / improved land only. Strict adherence to

minimum site disturbance will apply during planting and establishment (as standard under GPC 9 and GPC 10), with the additional requirement that no fertiliser application takes place. As set out in the Forest Service document Native Woodland Establishment GPC9 & GPC10: Silvicultural Standards (September 2015), any site proposed for GPC 9 and GPC 10 must be capable of supporting the vigorous growth and sustainable long-term development of the most appropriate native woodland type(s) identified for that site. Sites that do not meet this and other site requirements for GPC 9 and GPC 10 should not be submitted under these Grant & Premium Categories.

Water Abstraction

The potential impact of the proposed afforestation to domestic water was checked on IFORIS via Irish Water Infrastructure layer. There are 3 abstraction points 2-4km to the South East of CN86696. CN86696 is downstream from all of three abstraction points. CN86696 is proposed to be Native Woodland Establishment with no drainage, no fertiliser and minimal herbicides. The afforestation of this land is replacing agricultural activities including widespread fertiliser and slurry application with native broadleaf woodland with minimal soil disturbance and contaminants.

Designated habitats

CN86696 is not hydrologically connected to any pNHA/NHA or Natura 2000 area.

Aquatic

The proposed afforestation does not adjoin or connect to any watercourse.

Maps

All maps submitted meet Forest Service Standards.

Landscape Sensitivity

The proposed afforestation will not block views from cycling walking trails and as the planting will be mixed native broadleaf woodland, it will complement the natural environment.

Farming

Forestry Grants/Premiums are available to encourage Farmers to reduce the amount of agricultural land and increase the amount of forestry land. The vast majority of land being planted is owned by farmers and is a means of diversifying farm income (which is spent in the local economy) and increasing the viability of many farms.

Fire hazard

Broadleaf woodland is not considered a fire hazard

Mammals

Woodland creation will increase the biodiversity value of agricultural land. This is one of the objectives of the afforestation program."

The Statement in relation to appeal FAC 062/2021 also sets out that the proposed afforestation does not adjoin or connect to any watercourse, that the project is a Native Woodland Establishment, involves minimal soil disturbance, has no fertiliser application and that no drainage will apply. It states that water quality will not be negatively affected by proposed afforestation and that the afforestation of this intensively farmed land will stop the application of fertiliser and slurry on it. The statement sets out that the project (CN86696) is not hydrologically connected to any designated habitat, that Lough Allen pNHA is 1km to the southwest of CN86696 and has no hydrological connection. It also states that Cuilcagh SAC (Cuilcagh - Anierin Uplands SAC) is 350m east of CN86696 at a higher elevation with no hydrological connection (to the project area).

Consideration by the FAC

The FAC held a hearing of the above appeals on the 9th September 2021. The Committee considered in the first instance, if the procedures leading to the making of the decision to grant the licence for the proposed development were consistent with the EIA and Habitats Directives. Regarding Environmental Impact Assessment (EIA) and related matters, 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 mandatory EIA 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 13.12 ha and is sub-threshold for the mandatory submission of an EIA report. The FAC found that the DAFM 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. Based on the information before it, the FAC found no reason to conclude that there was any significant or serious error in the procedure followed by the DAFM in respect of EIA screening, or that the conclusion reached that EIA is not required is incorrect.

Regarding Appropriate Assessment and related matters, the FAC finds the DAFM carried out an Appropriate Assessment Screening and identified two Natura 2000 sites (Boleybrack Mountain SAC 002032 and Cuilcagh - Anierin Uplands SAC) within 15km of the proposal as set out in the Inspectors report on file. Reasons for the screening conclusions reached for each site are set out in the said report. The FAC finds that an In-Combination report dated 23rd February 2021 is to be found on file which sets out that in relation to CN86696, the DAFM deems that there is no potential for the project to contribute to any effects on the same two European sites, when considered in-combination with other plans and projects.

The FAC examined publicly available information from the NPWS and EPA and identified the same two Natura 2000 sites. The FAC considered that the DAFM had sufficient information in respect of the characteristics of the proposal, the location, and types and characteristics of potential impacts, to determine the likely significant effects of the proposal itself or in combination with other plans and

projects on a European site. The FAC considered that the procedures adopted by the DAFM in their assessment are acceptable. Based on the information available to it, the FAC is not satisfied that a serious or significant error or series of errors were made in the making of the decision regarding Appropriate Assessment in this case and concurs with the conclusions reached.

In relation to the potential impacts on the appellants dwelling houses, on tourism, community and related matters arising from the proposal, the FAC noted that the location of the dwelling houses referred to in the appeal grounds are beyond the minimum setback distances that are normally applied in the case of afforestation licence approvals relating to dwelling houses, that the appropriate setbacks are proposed along the public roads and that the file evidences that all the submissions made during the application process were considered by the DAFM in the making of the decision. In these circumstances, the FAC concluded that there was no convincing evidence before it that a significant or serious error was made in the making of the decision by the Minister to grant the licence for the proposed development as it related to these grounds of appeal including in relation to potential impact on dwellings.

In relation to the submission (in the case of FAC 064/2021) of grounds that include that he (appellant 064) is currently seeking Planning for a house and that the forestry will run not more than 60m from it, the FAC finds that the appeal provides no reference number for a pre-planning consultation with the Planning Authority or a reference for an extant planning permission at the location marked on the map submitted. Neither did the FAC find any record of a planning permission at the said location having consulted the website of Leitrim County Council. In such circumstances the FAC is not satisfied that the DAFM erred in its processing of the application for the licence in this case as it related to this ground of appeal.

The FAC considered the contentions in the grounds of appeal that errors were made in the record of the processing (including in relation to the relative location of a pNHA, the extent of forestry in the area, referral to the Local Authority and that the application documentation does not comply with legal requirements). The FAC examined the record of the file and considered the content of the statements made by the DAFM to it (including the DAFM submission that the application and documents submitted met its requirements) as they related to these matters. While errors of a minor nature may have occurred in the processing of the application the FAC is not satisfied that these errors were such as to materially affect the processing of the application.

Regarding contentions raised relating to water quality and related matters, the FAC reviewed the grounds submitted in the appeal and had regard for publicly available mapping, other online resources such as aerial photography, submissions received, and the decision of the High Court (Hyland J.) in *Sweetman v An Bord Pleanála* [2021] IEHC 16. The FAC finds that the proposal area is made up of six separate plots with plot 3 (comprising .54 ha) being proposed for Bio. The FAC finds that the approval as issued by DAFM dated 25th February 2021 requires the omission from the proposal of plot 5 on landscape grounds. While noting the content of the statement made by the DAFM to the FAC in relation to appeal 062/2021, wherein it sets out that the proposed afforestation does not adjoin or connect to any watercourse, that the project is a Native Woodland Establishment, involves minimal soil disturbance, has no fertiliser application and that no drainage will apply and that water quality will not be negatively affected, the FAC

concluded that it is not satisfied that the afforestation of plot 4 (972) and plot 6 (975) will have no effect on the waterbody STONY_010, in light of its unassigned status under the Water Framework Directive for the assessment period 2013-18, and having regard to the relative proximity and location of these two plots to the STONY_010 waterbody, the gradient of the said plots and that the possibility of overland flow to the said waterbody from the plots concerned could occur. The FAC considered this to be a serious error in the processing of the application for a licence in this case and as it relates to these grounds of appeal. The FAC therefore concluded that the licence CN86696 should be varied such that plot 4 (972) and plot 6 (975) are omitted from the approval relating to the licence.

In considering the appeal in this case the FAC had regard to the record of the decision, the submitted grounds of appeal, and all submissions received. The FAC concluded that a serious error was made in the processing of this application and is therefore varying the decision of the Minister regarding licence CN86696 in line with Article 14B of the Agricultural Appeals Act 2001, as amended, such that plot 4 (972) and plot 6 (975) are omitted from the licence approval. In varying the decision, the FAC considered that the proposal would be in keeping with Good Forestry Practice and Government policy.

Yours sincerely,


On Behalf of the Forestry Appeals Committee