



13th April 2022

Subject: Appeals FAC133/2021 & FAC134/2021 against licence decision CN84555

Dear

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 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 the parties to the appeal.

Background

Licence CN84555 for afforestation of 9.52 ha at Cartronatemple, Co. Leitrim was issued by the Department of Agriculture, Food and the Marine (DAFM) on 7th October 2021.

Hearing

A hearing of appeals FAC133/2021 & FAC134/2021 was held by the FAC on 14th March 2022. In attendance:

FAC Members: Mr. Donal Maguire (Deputy Chairperson), Mr. Derek Daly, & Mr. Vincent Upton
Secretary to the FAC: Ms. Marie Dobbyn

Decision

Having regard to the evidence before it, including the record of the decision, the notice of appeal, and submissions received, the Forestry Appeals Committee (FAC) has decided to set aside and remit the decision of the Minister for Agriculture, Food and the Marine to grant the licence CN84555.

Background

The licence pertains to the afforestation of 9.52 hectares at Cartronatemple, Co. Leitrim. The land would be planted as a native woodland and comprised of alder (3.81 ha), downy birch (2.86 ha), pedunculate oak (1.9 ha) and additional broadleaf species (0.95 ha). The documents include a copy of a site notice dated 8th August 2019 and a photo of the site notice in situ. Operational and environmental details and maps were also submitted with the application. Ground preparation would be through inverted mounding and manual weed removal and no fertiliser application.

There were three submissions on the application from members of the public. One raises specific issues in relation to a previous licence and notification while the other two make more general submissions about afforestation and licencing obligations.

The application was referred to the NPWS/DCHG (Department of Culture, Heritage and the Gaeltacht), An Taisce and Leitrim County Council. The NPWS/DCHG replied stating that it had no comment to make on the application and submitted some general observations on forestry applications. The County Council replied stating that the lands were in an area of high capacity/low sensitivity to forestry that may be able to accommodate larger areas of afforestation subject to detailed siting and design considerations. It submitted that the application did not appear to impact directly on a listed monument and included requests for licence conditions. No response from An Taisce is recorded.

The application was referred to a DAFM Archaeologist which noted that the proposal is over 200 metres from the closest recorded monument and that this would not be impacted but recommended that conditions be attached regarding setbacks from two historic buildings and the townland boundary.

The file includes an Inspector's Certification Pre-Approval document, with a date in the footer of 02/02/21 that includes Silvicultural and Environmental Considerations inputted on behalf of the Applicant. Also included is a section entitled *Assessment to Determine EIA Requirement* in which the proposal is considered across a range of criteria including project description, existing land use, cumulative effect and extent of project, water, soil, landscape and other factors. This section concludes that *EIA: On the basis of this examination this application be subject to the EIA process No.*

The document includes a screening for Appropriate Assessment on the Inspector's Certification with all responses stated to be On Hold and seven European sites listed within 15km of the proposal. A separate completed screening undertaken by an Ecologist on behalf of the Minister for Agriculture, Food and the Marine (30th June 2021) is contained on the file. The completed screening documents seven European sites within 15km of the proposal and the distances to the sites, their qualifying interests and conservation objectives and other plans and project considered in combination with the proposal. Reasons are stated for the screening decision in each instance. The proposal lies adjacent to Lough Gill SAC (001976) and is hydrologically connected to it and the proposal is screened in to proceed to Appropriate Assessment in relation to this SAC.

An Appropriate Assessment Report (AAR) and Appropriate Assessment Determination (AAD) were completed. The AAR provides details of the operational proposals and details of the lands and submissions made on the application. The qualifying interests and conservation objectives of Lough Gill SAC are considered in turn and the nature of the effects which could occur are identified and mitigations are specified. In relation to the three terrestrial habitats of the SAC these were deemed not to be present or adjacent to the site and that there is no potential for effects to arise. In relation to the aquatic habitats and species of the SAC it is identified that impacts on water quality could arise due to hydrological connectivity and mitigation measures to protect water quality and aquatic species are specified. Furthermore, otter (*Lutra lutra*) is identified as a species that could be disturbed by the proposed works or for indirect effects to arise through impacts on water quality and mitigations are specified. The AAR specifies the overall mitigations required and assesses potential residual impacts and in-combination effects. An Appendix is attached which identified forestry and non-forestry projects in the area. The AAR records that a separate AAD has been recorded. The AAD was available on the

Forestry Licence Viewer¹ and provides an overview of the screening and AAR that was completed, the European sites and effects considered and the mitigation measures specified and concludes,

Therefore, the Minister for Agriculture, Food & the Marine has determined, pursuant to Regulation 42(16) of the European Communities (Birds and Natural Habitats) Regulations 2011 (as amended) and Regulation 19(5) of the Forestry Regulations 2017 (as amended), based on objective information, that no reasonable scientific doubt remains as to the absence of any adverse effect on the integrity of any European site.

The licence was granted on 7th October 2021 with conditions including a requirement to adhere with the mitigation measures set out in the attached Appropriate Assessment Determination, a set of archaeological conditions and to liaise with the County Council prior to any works. The licence and related documentation were published on the Forestry Licence Viewer.

Appeals

There are two third party appeals against the granting of the licence and the full grounds of appeal and response from the DAFM have been provided to the parties and a brief summary follows.

FAC133/21 contends that there are multiple errors in the AA documentation and that while they could be seen as clerical errors this would be an assumption rather than fact and queries what other errors have been made. They submit that the AAS and AAD indicate that the project would be GPC9 whereas the site notice indicates GPC10.

It is submitted that the FAC would need to undertake its own screening and public consultation were it to affirm the decision. It is submitted that the project is screened out with reference to a Bird Foraging Table and that there is a reference to a habitat whereas the QIs (qualifying interests) of the SPA are bird species. It is submitted that the basis and reasoning for screening out this project are flawed.

It is submitted that the Appellant made a submission on the application in 2019 and that they were not notified of the opportunity to make a submission on the AA. It is submitted that there are a number of S/A responses from the Inspector in relation to EIA and that this should not occur where no self-assessment has been undertaken, specific reference is made to Q11, 18 and 19. It is submitted that there is a discrepancy between the percentage of forest cover in the associated waterbody in the EIA screening and in-combination statement.

Reference is made to internal correspondence in the DAFM in relation to scrub and trees on the site and that it should be confirmed as to whether the lands are currently forested. The grounds further submit that the scrub is not identified in the vegetation description of the site or on the Biomap submitted. It is submitted that areas of invasive/non-native scrub to be cleared have not been surveyed.

Appeal FAC134/2021 submits that the site notice was not displayed for the duration and that the area has a high nature value. It is submitted that the locality has a large percentage of afforestation and that

¹ <https://forestry-maps.apps.rhos.agriculture.gov.ie/>

the site itself has not been used for agriculture for some time. It is submitted that the form states that Hen Harrier are not in the area but that it and other species have been seen several times. It is submitted that the response to Q11 on the screening document is inadequate. It is submitted that the 14 day window is too tight and that the Appellant is awaiting further documentation. It is submitted that the description of vegetation on the site is inaccurate. It is submitted that the Appellant was denied planning permission by the County Council and that there is little regard to the effects of the planting of trees on the skyline. It is submitted that there is the potential for landslides.

It is further submitted that the lands to be planted are located between 2 SPAs and an SAC and questions the lack of response from the NPWS. It is submitted that the planting of the site will have a negative effect on adjoining farmland and houses. It is submitted that the AA Determination section 2 is untrue and that the land is connected to River Bonet hydrologically and Lough Gill and is used as a water supply. It is submitted that the mounding process will break ground and there will be runoff to the river. It is submitted that the current owner has not been contacted. It is submitted that the proposal would be conflicting with the Water Framework Directive.

The Appellant submitted further grounds with reference to EU Regulation 807/2014 and a series of photos of plant species and photos and diagrams stated to be of the landscape surrounding the proposal lands and the Appellant's house.

The DAFM provided a statement in response to the Appeal FAC133/2021 that listed the details and dates of the processing of the application and separate responses from the Administration section, Ecologist, and District Inspector. The DAFM submit that the decision was issued in accordance with their procedures, S.I. 191/2017 and the 2014 Forestry Act. The Ecologist submitted that the project classification is GPC 10 and this was erroneously entered into the site description table as GPC 9 in the AAS and AAR and not in in the AAD. It is submitted that all of the necessary documents and information required for the AA are present on file, and everything was assessed correctly from an ecological perspective and that a new AA is not necessary. It is submitted that the AA does include an AAR, which was uploaded to iFORIS and is currently set to 'public'. It is submitted that there was an error and that it should have been stated that "Application of the current Bird Foraging Table (06/01/2020), which indicates screen out scenarios in relation to birds listed as SCIs for this European site." It is submitted that the bird foraging table used in the assessment was an internally updated and verified table, which includes screen out criteria for peregrine and an extract of the table was submitted. It is further submitted that the citation provided in the AA Screening is incorrect, as this refers to the externally available table (06/01/2020), but that this does not change the outcome of the screening decision.

The District Inspector submitted that EIA screening questions 11, 18 and 19 were not answered in the fashion described and that the appeal is incorrect. It is also submitted that the EIA screening states that the percentage forest cover in the underlining water body as 11.48% and the in-combination statement notes the forest cover in the waterbody as approximately 11% and that the appeal grounds are incorrect. It is submitted that the site contains mature hedgerows with bordering areas of developing scrub both of which are identified and retained under the conditions of the licence. It is submitted that

the proposed project area is predominantly grass rush with areas of scrub specifically retained under licencing conditions and that the Bio Map clearly shows areas of scrub and hedgerows, scrub removal is not proposed in the licence applications, scrub is specifically noted and retained within the licence conditions.

In responding to FAC134/2021, the DAFM statement submits the same details of the of the processing of the applications and response from the Ecologist. The District Inspector submitted that there was a photo of the site notice in situ loaded on Iforis contacts dated the 08/08/19 and that the applications is a native woodland proposal, this scheme objectives of which note "wider ecosystem functions and services that new native woodlands can deliver. In particular, these include the protection and enhancement of water quality, aquatic habitats and in-stream species, the creation of linkage between semi-natural habitats at a landscape level, and carbon sequestration as part of Ireland's contribution to combating climate change."

It is submitted that approximately 16% of the townland is under forest cover with approximately 16% forest cover also present within 5km and that this is slightly above the national average forest cover of 11%. It is submitted that it is of no relevance if the land is not in active agricultural use for some time the proposed area is agricultural land with scrub encroachment and that there is no evidence or documentation that Hen Harrier makes use of this area. It is submitted that question 11 has not been answered SA this is factually incorrect. Forest cover in the area is 16% one local submission on the proposal has been received with a further two non-site specific more general submissions received. It is submitted that the 14 day window of appeal is a national policy issue.

The FAC134/2021 Appellant submitted observations in response to the DAFM statement on 13th February 2022. The FAC had sought through a further information request, clarification on the DAFM's statement and the response was provided to the parties. The Appellant made a further submission on 11th March 2022. These were provided to the DAFM and the Applicant and a response from received from the DAFM.

DAFM documents related to the application and licence were uploaded to the publicly available Forestry Licence Viewer and the DAFM referred the FAC to these files in its response. The FAC understood these documents formed part of the response to the appeal and were considered to fulfil the requirements of Regulation 7 of SI 418 of 2020. The Appellants were informed of the provision of these documents and it is these documents that the FAC considered in making its decision.

Considerations of the FAC

In relation to the inclusion of the reference to GPC9 in the Appropriate Assessment. The FAC understands this to relate to Grant and Premium Categories (GPC) of the Native Woodland Establishment Scheme and Afforestation Scheme. While matters related to grant aid are excluded from the remit of the FAC, this reference relates to the description of the project in the Appropriate Assessment, which is accepted by the DAFM to fall within GPC10. Both GPC9 and GPC10 are categories of native woodland establishment which can contain similar tree species and the same stocking rate and differ primarily in relation to soil type and related habitat type. The site notice states the afforestation

area and the words Native Woodland appear to have been added but there does not appear to be an error in relation to this matter. The correct species to be planted and the soil type are specified in the project description and Appropriate Assessment, while the screening and report do also include the expression "GPC9". Thus, a person reviewing the decision can ascertain which species are to be planted and the nature of the operations and the lands. These descriptions of the proposal, tree species and soil, have not been challenged in the appeal and the FAC considers them to be correct with reference to the information on file. The Appellant of FAC133/2021 refers to this as a clerical error and the FAC agrees with this. Furthermore, as the actual details of the species and site are specified in the Appropriate Assessment the FAC is satisfied that the correct proposal was assessed and that a person reviewing the decision would be informed of the correct details. The FAC considers the inclusion of a reference to GPC9 to be a minor clerical error of no seriousness or significance.

The Appellant submits that the AAD does not contain an AAR in its considerations, that there is no reference to a specific date and that the DAFM did not provide an AAR. The FAC considered the documents provided on the Forestry Licence Viewer. The published Appropriate Assessment Determination makes reference on page 4 paragraph 1 to an "*Appropriate Assessment Report (completed 30/06/2021)*". An Appropriate Assessment Report (listed as AA Report) was published on the Forestry Licence Viewer and available to the public with the correct identified date. The FAC is not satisfied that an error was made in this regard.

The grounds of FAC133/2021 and FAC134/2021 question the responses to a number of questions in the *Assessment to Determine EIA Requirement*, specifically Q11, 18 and 19 and the percentage of forest cover recorded. The FAC noted that the EU Environmental Impact Assessment (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. 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 afforestation of 9.52 ha, so is sub threshold for mandatory EIA as set in Irish Regulations.

The DAFM recorded a consideration of the application across a range of criteria, including existing land use, cumulative effect and extent of project, designated and non-designated habitats, archaeology, and landscape and determined that the project was not required to undergo the EIA process.

In responding to the appeal, the DAFM submit that the identified questions were not answered or forest cover recorded in the way submitted in the appeal. The FAC referred to the documents contained on the Forestry Licence Viewer in considering the appeal and the document listed as *Other* and Received on 02/02/21. The document itself is headed *Inspector Certification - Pre-Approval*. The FAC considers that

the responses as recorded reflect those in the appeal and not those in the DAFM statement. Furthermore, the FAC considers that more definitive responses should have been recorded to the questions 11, 18 and 19 or it should have been more evident in the file as to where the matters were assessed by the Applicant. The forest cover recorded is also not that stated by the DAFM in the statement or in other documents on file and it would appear that a different version of the document may have been referred to in the DAFM statement. Should this be the case it would also represent a serious error as the Minister must provide to the public the main reasons for not undertaking an EIA. The FAC considers that a new *Assessment to Determine EIA Requirement* should be undertaken and the matters addressed or that the correct Certification should be made available to the public.

The grounds of FAC133/2021 refer to the Appropriate Assessment screening in relation to the Sligo/Leitrim Uplands SPA and the reason "*Application of the current Bird Foraging Table(06/01/2020), which indicates screen out scenarios in relation to habitats listed as QIs for this European site*". They submit that the QIs (Qualifying Interests) of the SPA are Chough and Peregrine Falcon and not habitats and that this table contains no reference to Peregrine Falcon. The DAFM accept that these errors occurred but state that the screening conclusion would not change. The Appellant of FAC134/2021 also contend that errors were made in the screening for this site and in the AA.

In relation to the reference to habitats instead of species the FAC considers that a person considering the decision would be referred to the correct and available document which includes information on Chough and that this error is of a minor clerical nature. However, with reference to Peregrine Falcon, it is evident that the reasons provided cannot extend to this species as it is not listed in the referenced table. The DAFM did submit information on the species in responding to the appeal but this was not provided in the screening prior to the decision being made. The proposal is at a considerable distance from the boundary of the SPA but this, or any reference to the range of the species, is not provided as the reason for the screening conclusion. Instead, a reference is made to a table which contains no information on the species. Therefore, the FAC is satisfied that the determination does not contain sufficient reasons and that this constitutes a significant error. The FAC considers that a new screening should be undertaken and recorded in relation to the Sligo/Leitrim Uplands SPA. The FAC examined publicly available information provided by the EPA and NPWS and determined the relative position of the proposal to European sites and the reasons provided in relation to these other sites to be accurate. For clarity the FAC is satisfied that the screening conclusions and reasons are acceptable for other European sites and that this matter has no effect on the Appropriate Assessment screening or Appropriate Assessment undertaken for Lough Gill SAC.

In relation to the AA undertaken as noted, the effects considered likely and the mitigation measures required relate to the protection of water quality and the avoidance of disturbance of otter habitat. The Appellant of FAC134/2021 contends that the measures proposed in relation to ceasing operations during and after periods of rainfall and the monitoring of the site are generic and represent a lacuna in the AA. It is further contended that no accurate forecast is available for the site and reference is made to weather stations and that it is unclear what monitoring would be undertaken.

As stated on the Met Eireann website, forecasts are based on the Harmonie model which is modelled on a 2.5km grid. The FAC considers the Met Eireann forecasting system to be sufficient for the purposes employed in the AA. The FAC also considers that the measure should be understood in the context of the overall AA and required site specific measures and the nature, scale and location of the proposal. The proposal is for the planting of a native woodland with site preparation using invert mounding and pit planting without the digging of new drains. A 20 metre aquatic setback and 5 metre setback from relevant watercourses is required which would be undisturbed and vegetation within these setbacks would be retained. As noted in the AA this would provide a buffer of natural filtration a matter with which the FAC agrees. The FAC considers that the AA undertaken and measures required are appropriate and sufficient to ensure that the proposal will be not adversely effect the integrity of Lough Gill SAC having regard to the nature, scale and location of the proposal. Therefore, the FAC is not satisfied that an error was made in the making of the decision in this matter.

The grounds of FAC133/2021 submit that they made a submission on the application in 2019 but were not directly informed by the DAFM of the opportunity to make a submission on the Appropriate Assessment and that it is unreasonable to expect the public to monitor DAFM's consultation. The FAC noted that a site notice dated 08/08/2019 was contained on the file and that they made a submission on the application on 16/09/19. The FAC considers that the Appellant could have raised concerns regarding European sites in this submission but did not do so. The documents related to the application, including the Appropriate Assessment, were published on the Forestry Licence Viewer which is freely available to the public. The DAFM have also published details of how the public can make further submission on certain requests for further information, including Appropriate Assessment Reports. The DAFM published the fact that the application was subject to further consultation on its website². The FAC considers that the public consultation process was appropriate in this instance and is not satisfied that a serious or significant error occurred in the making of the decision in this regard.

The grounds of FAC133/2021 submit that it is noted by the Ecologist that there are scrub and trees on the lands and that the Ecologist had sought clarification from the Applicant on the treatment of these areas. It is submitted that the level of detail in the application was insufficient in relation to the habitats on site and the area for biodiversity enhancement. It is contended that it needs to be confirmed that the site does not meet the threshold to be defined as forested land under the Forestry Act before permission can issue and that consent to afforest land cannot be given if the land is already forested.

The FAC considered that the hedgerows and areas of scrub are shown on the maps provided and the network of hedgerows is marked. The Ecologist that considered the application was clearly aware of the nature of the lands as they contacted the Applicant in relation to the treatment of these areas and the Applicant provided clarifications regarding the proposed operations. Furthermore, the site was inspected as part of the processing of the application. The grounds provide no context as to why the surveys suggested should be undertaken and the FAC does not consider there is any reason why they might be required in this particular case. In relation to the granting of the licence, the FAC considered that the lands are evidently comprised of agricultural fields which have not been used for some time and

² <https://www.gov.ie/en/collection/1cd73-additional-consultation-afforestation-licence-applications-july-2021/>

is comprised of grass rush, scrub and trees and whose boundaries are marked by hedgerows. The FAC considers that it was appropriate for the application to outline and submit the boundaries of the lands and for the DAFM to consider the whole lands as part of the proposal. Furthermore, the treatment of the existing trees and scrub has been stated in the application which forms the basis of the licence. The FAC considers that the application and related mapping were adequate. The FAC is not satisfied that an error was made in making the decision in relation to these grounds of appeal.

The grounds of FAC134/2021 submits that the site notice was not in place for the required period. While it is contended that several people witnessed this there is no substantiation of the claim submitted with the appeal. The grounds do not state when the notice may not have been in place. A submission was made on the application on 21st September 2019 contending that the site notice was not erected but this was after the required 5 week period. The application included a copy of the site notice and a photo of the site notice in place. A number of submissions were made by the public on the application. The Inspector's Certification records that an inspection was undertaken on 30th August 2019 and that the site notice was in place. The FAC is not satisfied that an error was made in the making of the decision in this regard.

The grounds of FAC134/2021 contend that the land is high nature value land and submits a number of photos of plants some of which are described as protected. Although it appears to be suggested that these photos were taken on the lands this is not stated, and neither is it stated where on the lands the photos were taken, for example whether they might have been taken in a set back area. There is no description of the suggested frequency or distribution of the species on the lands. Further it is not stated who took the photos or provided the submitted identification of the species and the photos are of varying quality. The photos include a number of flowering plants while the appeal was submitted in late October. As noted by the Appellant the lands have not been in agricultural use for some time and are being encroached by scrub. The species are generally common wet grassland species and those that are suggested to be protected are not listed in Flora (Protection) Order 2015, which supersedes orders made in 1980, 1987 and 1999, while one species is included in this Order while not identified as such in the appeal. The Appellant did not raise this issue in a submission made on the application. The application was referred to the NPWS which provided no comment and the site itself was field inspected by the DAFM. The FAC does not consider that the granting of the licence removes any other obligations on the Applicant or their agents as provided in law. The FAC is not satisfied that an error was made in making the decision in this regard.

It is suggested that the lands have not been used for agriculture for some time. The FAC does not consider that there is any real significance to this and that the lands are private, agricultural land and the existing and approved land use was accurately described and considered.

These grounds further submit that the application may contravene EU regulation No 807/2014 of March 2014 (supplementing regulation (EU) No 1305/2013) of the European parliament and of the council on support for rural development by the European Agricultural Fund for Rural Development. The FAC considers that these regulations relate to grant aid which does not appear to be employed by the DAFM

and which, in any case, is a matter which falls outside of the FAC's remit as provided in the Agriculture Appeals Act 2001, as amended.

The grounds of FAC134/2021 contend that the form is incorrect in stating that Hen Harrier is not in the area. The DAFM submitted that there was no evidence of Hen Harrier in the area and the Appellant submitted a further response and a map from a Hen Harrier Survey in 2015. Question 2.3 under Environmental Considerations states that the proposal is not within a Hen Harrier SPA (Special Protection Area). The FAC considers this to be an accurate statement as the lands have not been so designated and there are no SPAs designated for this species that might be impacted. Furthermore, the FAC is satisfied that there are no Special Areas of Conservation or other conservation areas that might be impacted. The FAC considers that the granting of the licence does not remove any protections or requirements of other legislation, such as the Wildlife Acts. The FAC noted that the Forestry Standards Manual 2015 and Environmental Requirements for Afforestation 2016 outline certain DAFM procedures in assessing afforestation applications. The DAFM receive data on a regular basis from the NPWS on the location of Hen Harrier nesting sites and identified "Red Areas", which are 1.2 km radius buffers around Hen Harrier nesting areas. The FAC are not satisfied that an error was made in the making of the decision in relation to these grounds.

The FAC considers the matter of the time period in which an appeal can be made is set out in legislation and the matter does not fall within its remit. In addition, matters related to the granting of planning permission are not within the remit of the FAC.

Regarding the suggestion of landslide risk in FAC134/2021, the FAC considers that the works involve the planting of a native woodland on agricultural land with a mineral soil type. Site preparations would involve invert mounding and that this would not involve substantial or deep excavations. Furthermore, existing hedgerows and trees will be retained and the nature of the proposal is to expand tree cover. The FAC consider that there is no evidence that the proposal could have an adverse effect in this manner.

It is suggested in FAC134/2021 that the response from NPWS should be "investigated further" although this is not substantiated in any real way. As noted in the application, the proposal lies outside of but in close proximity to an SAC and also lies close to a pNHA (River Bonet) and the FAC considers it appropriate that the referral was made. The DAFM provided on the Forestry Licence Viewer the response from the NPWS/DCHG which submits no comment on the application and a series of general observations on forestry applications. The FAC does not consider that there is any evidence that an error was made in making the referral or in the considerations by the DAFM.

It is submitted in FAC134/2021 that Section 2 of the AA Determination is incorrect, that the lands are connected to the River Bonet which is hydrologically connected to Lough Gill and used as a water supply and has a poor status. Section 2 of the AA Determination notes that first and second order streams cross or adjoin the land and merge and flow into Lough Gill SAC. The FAC examined publicly available information provided by the EPA which records Bonet 020 waterbody as flowing across the land and has

been assigned a Good Status and Not at Risk for the third cycle of the Water Framework Directive monitoring. Lough Gill itself has been assigned a Moderate status and considered at risk and lies over 20 kms downstream from the proposal. The pressures identified in the second WFD cycle include urban and domestic wastewater, invasive species, extractive industries, agriculture and forestry. The proposal is for the planting of native woodland in the manner previously described. The FAC consider that the hydrological connection with Lough Gill is correctly noted and formed the basis of the Assessment undertaken and are not satisfied that an error was made in this regard.

It is submitted in FAC 134/2021 that the landowner has not been contacted in relation to the proposal while the DAFM contend that the owner has given written permission. The FAC examined records provided by the Property Registration Authority (landdirect.ie). The FAC considers that no evidence of deficiency has been submitted in this regard and is not satisfied that an error was made in the making of the decision in relation to this matter.

It is submitted that the proposal would have a negative impact on the landscape and local dwellings. The proposal is required to adhere with the *Environmental Requirements for Afforestation* which include an unplanted setback of 60 metres from dwellings. The lands are well setback from the public road and, as noted, have areas of existing trees and scrub. The proposal is for the establishment of mixed species native woodland. The lands do not fall within a designated landscape in the County Development Plan (CDP) and the general area is considered in the CDP to have the capacity to absorb afforestation subject to siting and design considerations. A dwelling is situated outside the eastern boundary of the proposal and part of the forest would lie to the north, west and south of the property. The occupant, if any, did not make a submission on the application or submit an appeal. The southern aspect is already comprised of trees some of which are closer than 60 metres. The eastern aspect would not be impacted and this is where access from the public road is located and visual connectivity to the public road will be maintained. The archaeological conditions require setbacks from historic buildings and laneway lying southerly from the dwelling. No planting would take place within 60 metres of a dwelling without consent and the proposal is for the planting of native woodland comprised of deciduous species which would not be in leaf in the winter. Downy birch and alder are both lighter crowned, deciduous species which will not reach a significant height.

The Appellant of FAC134/2021 identified their dwelling in their submission and the FAC considers that no direct impacts on light levels to the dwelling are likely to occur. Their land borders the proposal but the boundary runs in a southeast-northwest direction. This boundary has an existing hedgerow which will be retained and a 3 metre setback from hedgerows is included in the proposal. As noted, the proposal is for deciduous native woodland. Mapping of the lands from Ordnance Survey show the lands fall away from the public road and the Appellant's dwelling and land. For these reasons the FAC does not consider that the proposal would have a significant adverse impact on local dwellings or properties or the landscape and is not satisfied that an error was made in the making of the decision in this matter.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal, the responding statement from the DAFM and other submissions received. As outlined in this

letter, the FAC is satisfied that serious errors were made in making the decision. The FAC, in line with Article 14B of the Agriculture Appeals Act 2001, is setting aside the decision and remitting it to complete a new *Assessment to Determine EIA Requirement* or to ensure that the correct document is available to the public in this regard and to complete and record a new Screening for Appropriate Assessment in relation to the Sligo/Leitrim Uplands SPA regarding licence CN84555.

Yours sincerely,

Vincent Upton, On Behalf of the Forestry Appeals Committee