



3 November 2022

**Subject:** Appeal FAC 006/2022 relating to Licence CN89664

Dear

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

#### **Decision**

Having regard to the evidence before it, including the full DAFM record of the decision, the notice and grounds of appeal and a Statement of Fact (SoF) provided by the DAFM, all materials on file, and in particular the following considerations, the FAC has decided to set aside and remit the decision of the Minister regarding licence CN89664.

#### **Application**

The approval sought is for the afforestation of 5.55 hectares in the townland of Derrinurn, Co. Leitrim. The application was submitted to the DAFM on the 7<sup>th</sup> of October 2021. On the 21<sup>st</sup> of January 2022 the DAFM issued a notice approving the application with conditions.

There is one appeal against the approval.

#### **Forestry Appeals Committee.**

The appeal was considered by at the sitting of the FAC held on the 3<sup>rd</sup> of October 2022. The FAC Members present were; Mr. Myles Mac Donncadha (Deputy Chairperson), Mr. Derek Daly, Mr. Iain Douglas and Mr. Vincent Upton.

#### **Hearing**

At the sitting of the FAC it had before it the full DAFM record of the decision, the notice and grounds of appeal and a Statement of Fact (SoF) provided by the DAFM. Following examination and assessment of documentation on the file before it, the FAC decided an oral hearing was not warranted in this instance.

#### **Background**

The proposal consists of 5.55 Ha of afforestation in two blocks, separated by a transmission line, and comprising 80% Sitka spruce, 15% assorted broadleaves and 5% unplanted. The application received no submissions prior to the decision being made and was not referred to any other body for

consultation. A field inspection of the site was undertaken by the forest inspector on 10/12/2021. The Site Details – Pre-Approval report lists the soil type as mineral with grass-rush vegetation and having adequate access for management.

An In-Combination statement is on file dated 14/01/2022. This states that approximately 36% of the sub-basin Diffagher\_010 (wherein the application site is located) is under forest cover. The statement concludes that there is no likelihood of the proposed afforestation having a significant effect on sites or qualifying interests subject to the EU Habitats directive and as listed in the report. It continues to state that, as such, it cannot have any significant effect when considered in-combination with other plans and projects.

The Appropriate Assessment Screening Report dated 20/01/2022 identifies three SAC sites within 15kms of the application site with Boleybrack Mountain SAC 002032 and Cuilcagh - Anierin Uplands SAC 000584 screened out due the downstream position of the application site and thus a lack of any hydrological connection. Lough Gill SAC 001976 is screened out as the application site is located within a separate water body catchment, with no upstream connection, and the subsequent lack of any hydrological connection. The in-combination report is cited in support of the overall conclusion that there is no likelihood of a significant effect on the listed European sites.

The assessment to determine the requirement for EIA (with last spatial run dated 19/01/2022) concludes that the application should not be subject to the EIA process.

## **Appeal**

There was one appeal against the decision to refuse the licence and the grounds of appeal are summarised as follows:

- There is a very high proportion of landscape under forest cover: how can the inspector conclude that there can be no significant impact on the environment and what is the guidance used to form this opinion, including the cutoffs used in assessing cumulative impact?
- The area of the townland under forest cover is stated in the assessment to determine the requirement for EIA as 0.03% and is underestimated by a factor of approximately 20. The forest cover level cited in the assessment is incorrect and must prompt a new EIA Screening.
- Access to the application site is from the regional road R280 and the afforestation and harvesting of the resulting trees must be seen as one project for the purposes of consent and not split, as is the case here. As such, Leitrim County Council should have been consulted to ensure the exit onto this road, at a bend without adequate sight-lines is appropriate. Additionally, it is not clear how the plot on the other side of the transmission line can be accessed from the R280.
- Hedgerows are not adequately indicated on the biomap.
- There is no scientific evidence presented in support of the efficacy of water protection measures.
- Landscape issues are not properly addressed the recently updated Landscape Character Assessment for Leitrim has not been consulted.

## **Hearing**

### ***DAFM Statement of Fact provided to the FAC***

At the hearing the FAC had before a SoF provided by the DAFM dated 23<sup>rd</sup> of May 2022 which confirms the administrative details of licence application CN89664. The Statement from the Inspectorate

indicates a recommendation to remit the licence for reassessment. The statement continues, taking into account the information supplied by the appellant, that “DAFM would like to point out that a significant error was identified after the decision was made in relation to some of the EIA outputs on Iforis. % forest cover in the townland was identified as 0.03% on 19th January 2022. This is factually incorrect. % forest cover here is in fact likely 7 to 8%. This error would invalidate the EIA.”

#### ***Consideration by FAC.***

The FAC consulted with publicly available mapping provided by the Environmental Protection Agency, the OSI, the Forest Service, and on-line services.

#### ***Appropriate Assessment (AA).***

The FAC noted that the DAFM had carried out a Stage 1 screening assessment for Appropriate Assessment, including an in-combination assessment, in advance of making the decision to grant the licence. The FAC noted the procedures adopted by the DAFM in its screening, listing the qualifying interests and conservation interests for each site within the 15km radius of the development and assessment of the project design, location of the project and possible pathways to the listed designated sites. The FAC further noted that, in the case of the Natura 2000 sites listed, the DAFM discounted the possibility of significant effects arising for the reason stated above.

The FAC notes that the in-combination conclusion rules out any significant effect on the listed sites and qualifying interests due to there being no significant effect of the afforestation project which is the subject of the application. The FAC considers this to be an error as it suggests that the potential for a small effect from the afforestation project, which in combination with the effects of other plans or projects, could reach the level of ‘significant’ was not considered. Therefore the FAC concluded that the conclusions reached by the DAFM in carrying out screening for appropriate assessment should be revisited to assess the effect of the proposed afforestation in combination with other plans and projects.

It is noted that in the AA Screening and subsequent Determination was based on and informed by an In-Combination Statement which identified the project as within the River Sub-Basin Diffagher\_010, approximately 36% of which is under forest cover, which is greater than the national average of 11%. It is also noted in relation to the EIA screening the DAFM recorded in the Assessment to Determine EIA Requirement percentage figures of the current forest cover in the underlying waterbody at variance with the comparable figures as quoted in the In-Combination assessment report. And that cover in the townland was identified as 0.03% on 19th January 2022 which the DAFM indicate as factually incorrect and this error would invalidate the EIA

The FAC is of the view that proceeding to make a determination on this licence application without resolving the apparent differences in the record of forest cover in the subbasin as between the assessment to determine the requirement for EIA and the In Combination assessment the DAFM made a serious error. Furthermore, as the DAFM does not clearly identify which figure is considered to be the correct representation of forest cover the FAC has therefore concluded that a new screening for potential effects of the proposal on European sites in combination with other plans and projects should be undertaken to address this error.

#### ***Environmental Impact Assessment (EIA).***

The FAC noted that the DAFM recorded a consideration of the application across a range of criteria relevant to the development proposed, including water, soil, terrain, slope, designated areas, landscape and cumulative effects, and determined that the project was not required to undergo EIA. The FAC notes In the assessment to determine the requirement for EIA (with last spatial run dated

19/01/2022) in answer to the question 'What is the approximate % of forest cover at present in the applications townland?' and answer of 0.03% is displayed. In answer to the question 'What is the approximate % of forest cover currently in the underlining waterbody (or waterbodies)?' an answer of 40.07% is given.

In this case 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. However as stated in the SoF to the FAC it is indicated that a significant error was made in relation to some of the EIA outputs on iFORIS in particular the percentage forest cover in the underlying forest cover as identified which conflicts with the in-combination statement percentage forest cover in the river sub basin at approximately 36%.

In relation to this matter the FAC examined the documentation in relation screening for EIA and that the DAFM recorded in the Assessment to Determine EIA Requirement that the current forest cover in the underlying waterbody is at variance with the comparable figures as quoted in the In-Combination assessment report wherein it is recorded that the forest cover in the river sub-basin.

The FAC is of the view that the difference in this instance represents a serious error and that the error was not addressed in the DAFMs deliberations. Furthermore, the DAFM does not clearly identify which figure is considered to be the correct representation of forest cover in the locality. While the FAC is of the view that numerical and clerical errors can easily occur, it considered that the error in this case was a serious error and that the difference was not sufficiently resolved in the record of the decision or in the statement in response to the appeal. The FAC has therefore concluded that the Assessment to Determine EIA should be undertaken again to address this matter.

The FAC concurs with the recommendation from DAFM inspectorate that the issue of the percent forest cover in the townland be reassessed due to there being a significant error in the estimate as presented in the EIA screening documentation.

#### ***Water Framework Directive (WFD).***

EPA mapping shows the site lying within the 26A Upper Shannon WFD Catchment. The relevant sub catchment is the Owengar[Leitrim]\_SC\_010 within which forestry is not identified as a pressure. EPA mapping shows the WFD river waterbody DIFFAGHER\_010 running to the north and south of the site. The WFD Assessment of this river waterbody is that its status is Good in the period 2013-2018 and is Not at Risk. The underlying Ground Water body is Lough Allen Uplands which is Not at Risk. The FAC is not satisfied that the proposed works will negatively affect the status of the WFD waterbody or that an error was made in this regard.

#### ***FAC Considerations.***

In addressing the grounds of appeal, the FAC considered the following.

The proportion of landscape under forest cover: the FAC notes the appellants view that the level of forest cover in the vicinity of this site is excessive. To ensure good forest practice and the protection of the environment a condition is imposed on this approval that the afforestation project and all associated operations shall be carried out and completed in accordance with the measures set out in

the Environmental Requirements for Afforestation and the Forestry Standards Manual (as amended by periodic Circulars). The FAC concludes that, as already indicated in the Appropriate Assessment given the discrepancy regarding the percent cover of pre-existing forest in the Townland, a significant error arose in the original decision and the overall assessment with respect to forest cover should be revisited.

The area of Townland under forest cover: The FAC notes DAFM inspectorate recommendation to reassess the proportion of forest cover in the Townland. The FAC concludes that the proportion may be incorrect and that the reliance on incorrect information constitutes a significant error in the original decision.

Road access: The access required for afforestation and harvesting are addressed separately. Given the potential multiple (and changing) objectives of forest owners; the difference in intensity of possible harvest interventions; and the lengthy gap in years between afforestation and harvesting; the need for, and type of, access cannot be predicted with certainty. Two access points onto the R280 are indicated in the application and if either are required to be enlarged (or a new one opened) consultation will be needed with Leitrim County Council at that time and will be subject to consent from the Minister for Agriculture, Food and the Marine. Both plots are in one ownership block and so the FAC is of the view that the second plot may be accessed from the first. The FAC notes that in the interests of visual amenity and the safety of vehicular traffic and pedestrians, a condition is imposed on the approval that an unplanted public road setback of a minimum width of 10 metres (as measured from the surfaced edge of the public road) and accompanied by a 15 metre wide strip of broadleaves of native species suited to the immediate site (Birch, Oak, Hazel and Hawthorn where appropriate) shall be installed in all conifer plots adjoining a public road, in accordance with Tables 5 and 6 of the Environmental Requirements for Afforestation. The FAC concludes that adequate provision has been made for access to this application site for the purposes of afforestation and management.

Hedgerows: The FAC notes that within the limitations of mapping styles and information requirements it is not always easy to display all hedgerows on the various application maps. The decision states that, in the interests of protecting the character of the landscape and the protection of the environment, in particular, habitats for flora and fauna, all existing trees and hedgerows within the site shall be retained. The FAC considers this adequate protection for the hedgerows on this site.

Efficacy of water protection measures: the FAC notes that, to ensure good forest practice and the protection of the environment a condition is imposed on the approval that the afforestation project and all associated operations shall be carried out and completed in accordance with the measures set out in the Environmental Requirements for Afforestation and the Forestry Standards Manual (as amended by periodic Circulars). The FAC considers this adequate protection of water on this site.

Landscape issues: the updated Landscape Character Assessment for Leitrim referred to by the appellant was not consulted as it had no legal standing at the time of the decision. The FAC notes that relevant information was available at the time of the DAFM decision and the FAC is not satisfied that an error was made in this regard.

## **Conclusion**

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal and the DAFM Statement of Fact. The FAC is satisfied that the percentage forest cover in the Townland included in the assessment for requirement for EIA was incorrect and was not corrected or referred to at the time of the decision. In addition, the DAFM in-combination report states that the cumulative impact of insignificant impacts of the proposal, when combined with the effect of other plans and projects cannot reach the level of significant. The FAC offers that this may occur, and that

the in-combination assessment in this case be reviewed to reflect this possibility. The FAC is thus remitting the decision of the Minister to grant approval for CN89664 in accordance with Section 14B of the Agricultural Appeals Act 2001, as amended, to undertake a new Assessment to Determine EIA requirement and AA Screening, and for a reappraisal and of the in-combination effects of the proposal together with the effects of other plans or projects.

In considering the appeal the FAC had regard to the record of the decision, the submitted grounds of appeal, and submissions received. The FAC is satisfied that a series of errors was made in making the decision. The FAC is, thus, setting aside and remitting the decision to the Minister regarding licence CN89664 in line with Article 14B of the Agricultural Appeals Act 2001, as amended, to undertake an Assessment to Determine EIA Requirement and Appropriate Assessment Screening and to make the application documents available on the Forestry Licence Viewer before a new decision is made.

Yours sincerely,

,

---

Myles Mac Donncadha On Behalf of the Forestry Appeals Committee