



7th November 2022

Subject: Appeals FAC142/2021, 143/2021, and 144/2021 in relation to felling licence TFL00652821

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

Hearing & Decision

The FAC considered appeals FAC142/2021, 143/2021, and 144/2021, all of which relate to the decision by the minister to grant licence TFL00652821, during a sitting of the FAC on the 17/08/2022. In attendance:

FAC Members – Mr. John Evans (Deputy Chairperson), Mr. Iain Douglas & Mr. Luke Sweetman

FAC Secretary – Mr. Michael Ryan

The FAC considered all of the documentation on the file, including application details, processing of the application by the Department of Agriculture, Food, and the Marine (DAFM), the grounds of appeal, and all other submissions, before deciding to set aside and remit the Minister's decision to grant TFL00652821.

Background

The licence under appeal was issued by the DAFM on 15th of November 2021 and is for the felling and replanting of 16.5ha in Gortnasillagh East, Co. Leitrim. The proposed operations are for five plots which are currently stocked with Sitka Spruce. Replanting is to be predominantly of Sitka Spruce (76.8%) with Additional Broadleaves (13.2%) and open space (10%).

The public file which includes details of the application, and the licence, are available on the DAFM Forest Licence Viewer (FLV).

Site Details

The site is largely contiguous but irregular in shape and is in six plots. In the south of the site in plots 4 and 5 there is a forest road (plot numbers refer to those given in the application). Plots 4 and 5 are

separated by a corridor for a High Voltage power line. Plots 1 and 2 are separated by a local road. Another local road bounds the site at plot 5 to the south. There are two houses proximate to the site, one to the west of the site (at plot 4) and another to the south of the site (at plot 3). Plot 6 is a small plot surrounding ruins.

The Appropriate Assessment Screening Report (AAS), describes the project site as:

WD4 conifer plantation (as per A Guide to Habitats in Ireland (Fossitt, 2000)) dominates the project area. This habitat is solely composed of mature Sitka spruce, with a number of areas within the project area having suffered wind-throw. Internally, the ground flora within the plantation is largely composed of bryophytes, dominated by common tamarisk moss. Towards the edges of the site and areas where wind-throw has occurred, more light penetrates through to the soil and the ground flora is more diverse with species such as foxglove, primrose, herb Robert, violets, dandelion and wood sorrel present. A number of woody species including ivy and honeysuckle are also present.

There are no existing buffers adjacent to any of the watercourses within the forestry site meaning the forestry is planted right up to each stream. Plants on the riverbank of the River Mullaghbaun within Plot 1 include wood sorrel, wood anemone, great wood-rush and bluebell. The fungus scarlet elf cup was also seen occasionally in the wetter areas of Plot 1.

Both the AAS and a Natura Impact Statement (NIS) submitted by the applicant confirm the presence of watercourses on the boundaries of the site to the east and south of the site, while the NIS states that two first order streams rise within the site. Both documents confirm that these water courses have a hydrological connection to Lough Allen at a hydrological distance of ca. 4.3 to 4.5km.

OSI contour mapping available at Geohive.ie indicates that the site is located on somewhat elevated ground with a slope largely falling from ca. 130 m at the northern side of the site to ca 70m at the southern end over a distance of ca. 535m, with the slope falling in a northeast to southwest direction.

The application

Application documents are on the public file, marked as received/entered to the Forest Service (FS) system on the 14th and 15th of April 2021 as follows:

- Site map, dated 18th November 2020
- Felling Submission Report, undated – this shows stock as being 33 years in 2022.
- OSI based Location Map, undated
- Harvest Plan, undated, including Harvest Map and Reforestation Map
- NIS, dated 13th April 2021

The maps included in the Harvest Plan show several forest drains in addition to those noted above. A temporary bridging point is shown crossing a watercourse flowing between plots 2 and 3. Also noted on the map are archaeological zones (one inside the site, and one immediately to the north of the site), the location of red squirrel sightings, and the location of a possible badger sett. A machine maintenance area is also marked as is the location of the ESB line.

The replanting maps shows several areas being given over to mixed broadleaves, specifically on either side of the public road between plots 1 and 2, on the western portion of plots 2 and 3, and on the southern portion of plot 3. A strip of open space is also marked on the edge of plot 3, and also a thinner strip of what appears to be mixed broadleaf along the southern edge of plot 2.

The NIS was prepared by an ecological consultant. This specifies relatively standard site operations; the use of mounding at a 2x2m spacing with mound drains at 8m centres; with silt traps to be installed throughout the mound retainage network together with 10m setbacks with 10m strip of broadleaves are to be planted along public roads and adjoining watercourse. The NIS includes a screening for Appropriate Assessment, and notes that the site is not contained in a European site and that no Annex 1 habitats or Annex II species were recorded during a site survey. In the section on residual effect, none are noted, however it is stated that there is a possibility of a badger sett on the site, and that this needs to be investigated further before any works take place on site to see if it is in use. The NIS also notes the presence of Red Squirrel on the site and specifies the need for surveys and mitigation implementation before operations on site. A number of mitigation measures are specified for badger and red squirrel.

Referrals and Submissions

Referrals are on the public file addressed to National Parks and Wildlife Service (NPWS) and Leitrim County Council on the 21st of April 2021.

The County Council replied on the 19th of May 2021. The reply indicates the lands are not located within any designated area under the County Development Plan 2015-2021, and that the lands are located in a High-Capacity area to accommodate Forestry. Two national monuments are referenced. Recommended conditions for any licence relate to liaison with the District Engineer in relation to roads, adherence to best practice, and consultation with the Development Applications Unit in relation to recorded monuments.

The NPWS replied on the 26th of May 2021 and made no specific comment in relation to the application and attached general guidelines in relation to forestry applications.

A submission from a member of the public is on file, recorded on the FS viewer with a date of the 26th of April 2021. A separate submission is also on file dated the 21st of May 2021. These raise issues similar in nature to the submitted grounds of appeal and includes requests for consultation relating to any restructuring of the site, restocking, and felling transportation to mitigate noise and other disturbance.

The application was also referred to the DAFM Archaeology section, and a response is on file dated the 13th of July 2021. This observes and specifies conditions in relation to:

- Two ringforts (LE018-005 and LE018-056) one of which is inside the project site.
- Three historic farmyards
- A historic townland boundary.

Inspectors Certification Report

An Inspector's Certification report is on the public file. In relation to details of site inspection, the version on file is truncated and it is unclear from the document whether the site was field and desk inspected, or desk inspected. The Risk Analysis section (which would dictate requirement for a field inspection) are blank.

The report includes a section headed Assessment to Determine EIA requirement. This considers a number of criteria based on a spatial examination carried out on the 12th of October 2021. These include Cumulative effect and extent of project, Water, Protection of the Fresh Water Mussel, Archaeology, Landscape, Designated Habitats, Social, Safety, Transfrontier and Public participation and concludes that the proposed felling and replanting operation does not require an EIA.

The report also includes a section entitled Appropriate Assessment Screening. This describes the project site as follows:

This project comprises 15.44 hectares of afforestation. The predominant soil type underlining the project area is predominantly podzols in nature. The slope is predominantly flat to moderate (<15%). The project area is crossed by / adjoins an aquatic zone(s). The vegetation type(s) within the project area comprise conifer forest

The section goes on to record three European sites as being within 15km of the site: Boleybrack Mountain SAC, Cuilcagh – Anierin Uplands SAC, and Lough Gill SAC. All three sites are screened out, and it is noted that:

the necessary AA Determination and/or ecology report has been prepared by the DAFM ecologist and scanned to file Contacts.

The Report concludes with a section headed Inspector's Recommendation, which is to approve with conditions. Seven such conditions are noted in the report, though these are truncated in the version on file. A further note is included in the report, that an ecology report be attached to the licence.

DAFM Appropriate Assessment Process

Further details of the Appropriate Assessment process, as recorded in the Inspector's Certification are on file.

An Appropriate Assessment Screening Report and Determination (AASRD) is on file dated the 5th of November 2021. This was prepared by an external consultant Project Ecologist on behalf of DAFM. The report observes that the project area is underlain with surface water gleys/ground water gleys (97%), mineral alluvium (2%) and blanket peats (1%), lies between 70m and 130m above sea level and has moderate to steep undulating slopes. It also notes that the eastern half of Plot 1 lies within a 1-in-100 years fluvial Flood Hazard area. Details of Water Framework Directive watercourses and catchments are noted. The report notes that an unnamed second order stream flows along the eastern boundary of Plot 1, while another stream springs and flows along the southern boundary of Plot 2. Both of these watercourses are stated to provide a hydrological connection to "Lough Arrow", ca. 4.3 km downstream of the project area.

The FAC note this reference to Lough Arrow, and consider it to be a clerical error in reference to Lough Allen as this matches the Hydrological Distance given and there is no hydrological connection to Lough Arrow which lies some 18km direct distance to the southwest of the site.

The report notes that three European sites are within 15km of the project area:

1. Boleybrack Mountain SAC [2032]
2. Cuilcagh – Anierin Uplands SAC [0584]
3. Lough Gill SAC [1976]

No additional sites beyond 15km were included in screening. The three sites were screened out for stage 2 Appropriate Assessment on the basis of an in-combination assessment and for the following additional reasons.

- Screen out due to the separation distances of 1.8, 7.8, and 9.8 km between the European sites and the project, as per the current DAFM Annex I Habitats table, which provides screen out scenarios in relation to habitats for which this site is designated (Sites 1, 2 and 3 above)
- This separation distance will also prevent adverse effects to slender green feather-moss (site 2 above)
- Although hydrologically connected to the project area, this SAC does not lie downstream of the project. (Sites 1 and 2 above)
- Lack of Hydrological connectivity (site 3 above)

The AASD includes an In-combination assessment as an Appendix. This includes searches on the 5th of November 2021 of relevant planning systems in the vicinity of River Sub-Basin Diffagher_010, including Leitrim Co. Co., An Bord Pleanála, the EPA, and DAFM (for forest roads, afforestation and felling including thinning). Consideration is also given to the Leitrim County Development Plan.

An Ecology report, dated the 5th of November 2021, is also on file prepared by a FS Ecologist. This reflects the observations made in the applicant's NIS in relation to Red Squirrel and Badger, and specifies a number of specific mitigations which include consultations with NPWS (and issue of necessary licences by that body where required), restrictions on operations within specified distances of squirrel dreys and badger sets, and timing limitations.

Also on file is an Appropriate Assessment Determination (AAD), also dated the 5th of November, and prepared by the same external consultant Project Ecologist on behalf of DAFM who prepared the AASD. The AAD notes that:

The NIS submitted with this application and compiled by a qualified ecologist does not include any information relating to Natura sites other than to say, "there is no possibility of the project itself (i.e. 'individually') having an adverse effect on the integrity of the associated Natura sites" (those associated sites being those present in the wider area). It is agreed that all Natura sites should be screened out in relation to this project (see AA Screening Determination on file). The NIS submitted with this application is therefore deemed unnecessary as this project need not proceed to Stage 2 Appropriate Assessment. Thus, no AA-related mitigation is required. It is expected that the proposed clearfelling and reforestation project will be carried out with adherence to all best practice guidelines. A separate ecology report, addressing non-AA related issues, has been prepared as part of this assessment and is included on file.

The AAD concludes:

All Natura sites have been screened out and therefore Stage 2 Appropriate Assessment is not required.

Licence

The approval letter was issued on the 15th of November 2021. Schedule 2 of the licence contains standard conditions. Under the heading "Other conditions attached to this licence", additional conditions (a) through (h) are specified. These are also standard and refer in the main to good

practice standards and guidelines, timelines associated with replanting, proper approvals, and adherence to legislation. Condition (h) includes further conditions specified by the Forestry Inspector. These again include reference to various standards and guidelines, and specific conditions relating to the protection of the environment, water quality and aquatic ecosystems, visual amenity, protection of wildlife habitats, soil stability, safety of vehicular traffic and pedestrians. Also included are specific reference to two dwelling houses, with Irish Transverse Mercator (ITM) Coordinates provided, and a requirement that a 60m setback be applied, accompanied by a further ten rows of native broadleaves from that setback. A further condition is included with requirements for the protection of archaeological features. Finally, a condition is included requiring the licence holder to “Adhere to the mitigation measures set out in the attached Ecology Report, dated 05/11/2021”.

Grounds of Appeal

There are three third party appeals against the decision to grant the licence: FAC142/2021, 143/2021, and 144/2021. The grounds of appeal are available on the FAC file and were considered in full by the FAC. In the case of FAC 143/2021, the details of appeal are supported by several photographs and maps which are available on the FAC file. Two appellants requested that the FAC hold an oral hearing in respect of the appeals.

The DAFM provided written responses to the grounds of appeal in the form of Statements of Fact to the FAC. In each case, the DAFM Administrative Comments states that “the decision was issued in accordance with our procedures, S.I 191/2017 and the 2014 Forestry Act.” The Statements from the Forestry Inspectorate all state that the AA screening procedures at the time of processing were followed (v.05Nov19). In relation to the summarised grounds outlined (see below), the Statements address the points raised, with the exception of the Archaeological related grounds, which are addressed in an attached letter from the DAFM Archaeology section. The Statements of Fact are on the FAC file and were considered in full by the FAC.

The following is a summary of the grounds of appeal, together with corresponding summaries of the points submitted by DAFM in response. These are further elaborated in this letter where appropriate under the heading *FAC Considerations*.

1. *That no DAFM site inspection took place, and that this is relevant both to the decision-making process and several of the grounds of appeal (FAC 142/2021, 144/2021).*

DAFM submitted that their procedures contain no automatic requirement to carry out a field inspection and that the Desk-based assessment followed the standard procedures for a felling licence application.

2. *That the application details submitted and approved are flawed, defective, inaccurate, and incomplete (FAC 142/2021, 144/2021).*

The DAFM submitted that the site details are correct, that the licence area is 15.44ha, and that the assessment followed the felling standard operating procedures.

3. *That submissions, objections and concerns have been largely dismissed or ignored (FAC 142/2021).*

DAFM submitted that all submissions were read and considered, that the main theme of those submissions related to loss of light due to the current structure of the application area, and that those issues were addressed by way of licencing conditions stipulating set-

back distances and the planting of additional broadleaves. That start and stop times for works on the site are not appropriate conditions for the licence.

4. *That the aquatic zones/water courses (recorded). do not reflect conditions on the ground, that water courses and crossings have not been adequately recorded, and that cumulative effects on European sites have not been adequately assessed (FAC 142/2021, 143/2021, 144/2021).*

DAFM submitted that the harvesting map supplied maps relevant watercourses, including a watercourse running from plot 1 to plot 2; and that the map shows the proposed crossing point for the licence application under consideration. DAFM also submitted that the licence conditions specifically address the protection of water quality and the prevention of rutting.

5. *That the decision does not reflect the true and accurate conditions on the ground (FAC 142/2021).*

DAFM submitted that water quality concerns are addressed in the conditions of the licence, and that issues raised by the appellants, including windthrow and pumping of water would be resolved through the felling of the trees.

6. *That there are oversights and or omissions on access/ accessibility of the plots which have not been addressed in the approval decision (FAC 142/2021, 143/2021).*

DAFM submitted that access is in place for plots 2,3,4 and 5 through an existing forest road, and that access to plot 1 may be the subject of a future licence application.

7. *That the approval decision is in conflict with the National Monument Service's legislation and protection of historic sites. That there are archaeological and historic features which have been overlooked, ignored or not comprehensively considered in the decision, including a suggested need for remapping of an existing recorded monument and likelihood of other unrecorded archaeological features. That there are concerns regarding open spaces and areas adjacent and within protected monuments, around buildings, historic features and habitats (FAC 142/2021, 143/2021, 144/2021).*

The DAFM Archaeology section submitted a detailed response to the grounds that relate to the archaeological issues on and near the site. These were made in the context of a site visit by a DAFM archaeologist to the site following the submission of the appeals. It is submitted that, for the most part, there is little to support the issues raised by the appellants, and detailed explanations are provided.

In relation to the submissions by the appellants that consideration be given to the possibility of there being an unrecorded structure on the site (a 'sweathouse'), it is submitted that there is merit to this and that while it is not possible to definitively confirm the nature of that structure, that a 20m setback be established around it. However, it is also submitted that this structure is not recorded on any inventory or record of monuments, and that no details were provided by the appellant.

In relation to the contention by the appellants in their grounds of appeal that conditions should be imposed for the removal of trees and sapling in archaeological exclusion zones, it is submitted that it is not DAFM policy, nor is there a legislative basis, providing for the imposition of general maintenance obligations on forest owners in respect of archaeological features.

8. *That there are concerns for the proposed location of fuel tank in plot 4: with power lines and water flow, connectivity to water courses from the stone covered raised area. There is evidence of existing water flow or run-off (FAC 142/2021, 143/2021).*

DAFM submitted that consultation regarding the removal of conifers in proximity to power lines is matter for the applicant and ESB Networks. DAFM also submitted that the proposed fuel storage area is 20 to 30m from the powerline and the proposed road, and is not within 50m of an aquatic zone or 20m from a relevant watercourse.

9. *That approval for species which are not consistent or compatible with the local native woodland type have been approved in one plot for Native Woodland (FAC 142/2021).*

DAFM submitted that the licence conditions state that species suitable to the site are to be planted along watercourses, other setbacks, and on-site boundaries; and that the use of locally grown trees would be unreasonable and impractical.

10. *That the proposed setback of 60 metres distance from an occupied dwelling and farm buildings to the Northwest of the steep drumlin is inadequate as the 60 ft high spruce plantation is planted on a much higher and steeper (top of drumlin and ridge). elevation which is to the south and east of the occupied home, farm and lands (FAC 142/2021, 143/2021).*

DAFM submitted that the setback conditions conform to section 14.5 of the Standards for Felling and Reforestation, and that conditions stipulating ten rows of broadleaved species suitable to the immediate site have been specified beyond the dwelling setbacks. DAFM also submitted that while there are localised areas which are steep, the site is predominantly flat to moderate.

11. *That the decision, conditions, and operations timing conflict with the Government's commitment to protection of species and biodiversity, with reference to evidence that the site hosts Badger, breeding Red Squirrel, Sparrowhawk, Woodcock and other species (FAC 142/2021).*

The DAFM submitted that the applicant is bound by the Wildlife Act and referenced the condition to adhere to mitigations as set out in the ecology report.

12. *That there are concerns for and no mention or recognition within the approval decision for the re-establishment or restoration of the traditional hedgerows which have been damaged and or destroyed both within and forming the boundary of the lands by the unwise and inappropriate planting of the Sitka spruce on site (FAC 142/2021, 143/2021).*

The DAFM submitted that such actions are beyond the remit of a felling licence.

13. *That the approval decision conditions will repeat and replicate the damaging negative impacts on protected species, homes, lands and habitats, neighbouring lands, homes, livelihoods and well-being (FAC 142/2021).*

The DAFM submitted that these issues are beyond the remit of a felling licence.

14. *That there is a current/ active information seeking request to FS under access to justice which will not be obtained or be assessed by appeal date deadline, That the right to submit additional information, observations, facts and objections is reserved (FAC 142/2021, 143/2021, 144/2021).*

The DAFM submitted that this was a policy issue and not a matter for the licensing process.

15. *That the timing of operations, including start and finish times, are not specified in the licence, and that given the possibility of noise and light disturbance, this should be included (FAC 143/2021).*

The DAFM submitted that all submissions were considered, and the main issue raised in these had surrounded loss of light due to the current structure of the application area. DAFM stated that these issues were addressed in the licensing conditions by way of setbacks and the planting of additional broadleaves suited to the immediate areas. DAFM also submitted that start and finish times are operational matters for the applicant and are beyond the scope of a felling licence.

16. *That the NIS is inadequate by reason of the time taken in carrying out field surveys (FAC 143/2021).*

The DAFM submitted that this point had no relevance to the appeal.

17. *That there is a potential right-of-way on plot 2 that has not been adequately considered (FAC 143/2021).*

The DAFM submitted that no right of way or mapped trackway exists at the point noted by the appellant, and that the unplanted strip visible in aerial photos is likely a firebreak or to facilitate access and maintenance at time of planting.

18. *That there are contradictions between the Harvest Plan and the licence regarding the timing of operations (FAC 143/2021).*

DAFM submitted that the felling dates had been approved on the basis of the felling dates supplied by the applicant, as stated in Table 1 and bound by point 4 of Schedule 2 of the licence.

19. *That the wording of the red squirrel mitigation lacks precision and clarity, with reference to sections 23(5)(d) of the Wildlife Acts and European Legislation (FAC 143/2021).*

The DAFM submitted that it is a condition of the licence to adhere to mitigations set out in the ecology report dated the 5/11/2021

20. *That there was a failure to make available, on request, information relevant to the decision-making process (FAC 143/2021, 144/2021).*

The DAFM submitted that this is a policy or administration matter.

21. *That a conifer plantation forestry model in this location is unsuitable and unsustainable (FAC 144/2021, 144/2021).*

The DAFM submitted that this is a policy or administration matter.

Correspondence

Following receipt of the Statements of Fact from the DAFM, these were circulated to the relevant appellants for comment. In the case of FAC 143/2021, the appellant provided a written response to the statement. This is available on the FAC file and was included in the material considered by the Committee when making its decision. The following is a summary of the points raised and these are further elaborated in this letter where appropriate under the heading *FAC Considerations*.

- a. The appellant disputed the Inspector's contention in the Statement of Fact that start and finish times are not a matter for the licence conditions.

- b. The appellant highlighted a potential conflict in the description of the slope of the site in the Inspector's portion of the statement and that provided by the DAFM Archaeologist and highlighting the influence of local topography on the appellant's dwelling and lands.
- c. The appellant asserted that the setbacks referred to in Condition 8 of the licence apply to another dwelling, and that no mention is made of the appellant's dwelling.
- d. The appellant reiterated and expanded on concerns in relation to electricity been disconnected during felling operations.
- e. The appellant stated that Condition 5 of the licence refers to a stream on the eastern boundary, and that no reference is made to the stream which runs through the plantation between plots 2 and 3. The appellant also stated that this latter stream has steep banks and that the appropriate setback under the DAFM's guidelines is 15m
- f. The appellant provided a route for the possible ancient roadway.

The response included several photographs illustrating the points raised. This response was itself provided to the DAFM and the applicant for comment, and none was received by the FAC.

Request for Oral Hearing

In the first instance, the FAC considered the request by two of the appellants that an oral hearing be held in respect of the decision to grant the licence. The FAC noted that in each case the written appeals provided were detailed and clearly outlined the grounds of appeal. Statements of Fact were provided by the DAFM, and in one instance the appellant in question provided a written response providing further detail on their appeal. The FAC considered that under the particular circumstances of the appeals submitted, it was not necessary to conduct an oral hearing in order properly and fairly determine the appeals.

FAC Consideration of the Grounds of Appeal

Absence of site visit by Forestry Inspector and adequacy of NIS

In the grounds of appeal, the adequacy of the NIS is challenged on the basis of the size of the site and that the Ecologist is reported to have carried out another site survey on the same day. The FAC note that the NIS provided was carried out by a professional ecologist, with a Masters degree in Ecological Assessment and who has several years' experience in ecological assessment. The FAC notes that the NIS states that the ecologist's role in the preparation of the NIS was the supervision of the field survey and preparation of the report, and that the field survey was completed by ecologists. The NIS also states that the field survey was preceded by a desktop review which informed the conduct of the survey. The NIS includes several photos of the site and resulted in the identification of the possibility of several species including red squirrel, deer, badger, and pine martin. Based on the above, the FAC are satisfied that the NIS represents an accurate reflection of the ecological situation on the site.

The grounds of appeal also challenge the adequacy of the decision by the Forestry Inspector to recommend licencing on the basis that no site visit was carried out by the inspector. The FAC notes the statement provided by DAFM in which it is stated that the procedures operated by the department do not require a site visit for a felling licence. The FAC also notes that the NIS was provided by the applicant voluntarily and was available to the Inspector at the time of the decision. The FAC considers that no error was made by DAFM in the processing of the licence as a result of a site visit not being made by the Inspector.

Two of the appellants raise concerns as to the adequacy of the details of the application. Only one specific concern is stated that the site details are given as 15.44 ha and that this is not correct. The appellant in this instance does not state in which documentation this figure is provided. In the statement of fact, the DAFM stated that the area is correct and is 15.44 ha.

The FAC reviewed the application documentation and noted that the licence issued is for a total of 16.5 ha, and that this is the total area of the plots considered in the Inspector's Certification document. This figure is listed as the species area in the Certified Species Map submitted by the applicant. This map also includes 0.29ha of exclusion area comprised of open space in Plot 6 and an ESB setback. The NIS, also provided by the applicant, gives the site area, combining species area and exclusion area, as 16.79ha.

The FAC also note that the area of the site is given on the DAFM Forestry Licence Viewer as 15.44ha, and this is also the area referenced in the Inspector's Certification under the heading "Site Details", and that these reflect the area stated in the DAFM Statement of Fact. The FAC is of the view that this difference is not insignificant and that there was ambiguity with respect to the advertisement of the area to be licenced. On this basis the FAC is setting aside the decision of the Minister and remitting the application to DAFM for readvertisement of the licence application.

Setbacks from property and consideration of submissions

Several grounds of appeal relate to the determination of setback distances and whether adequate consideration was given by the DAFM to issues raised in submissions to the licencing process.

In relation to the submission in Grounds of Appeal that setback distances are only provided in relation to one house, the FAC observe that two sets of coordinates are provided in the licence conditions, corresponding to two houses. The FAC finds no error was made by the DAFM in the identification of dwellings requiring setbacks.

It is submitted in the grounds of appeal that that the proposed setback of 60m from an occupied dwelling and farm buildings to the west of the site is inadequate as the site includes a drumlin which elevates the forestry. In the Statement of Fact, the DAFM submit that the setback conditions adhere to Section 14.5 of the Standards for Felling and Reforestation, and that an additional ten rows of broadleaved species suitable to the immediate site have been specified beyond the dwelling setbacks.

The DAFM also submit in their Statement of Fact that the majority of issues raised in submissions relate to the loss of light due to the current structure of the application area and that those issues had been addressed through the specification of setbacks and additional planting.

Section 14.5 of the Standards for Felling and Reforestation (DAFM, 2019) sets out a minimum 60 metre setback from Dwelling houses, and also includes additional design considerations. These include consideration of whether the building is surrounded by woodland on two or more sides, the creation of a varied setback to create a naturally undulating forest edge, and consideration of locally important views from the dwelling. In this instance, the dwelling house is not surrounded on two or more sides, and no locally important views have been highlighted by the appellants.

The FAC is of the opinion that the inclusion in the licence of additional planting of native species beyond the stipulated 60m setback is an appropriate measure to ensure that there is an undulating forest edge. The Committee also notes that the Reforestation Map (supplied by the applicant with

the Harvest Plan) includes an area of additional broadleaf planting in relation to the area of the project site that is directly adjacent to the dwelling to the west. The density for broadleaf planting stipulated in the licence is 3,300 stems/ha, which is consistent with planting for Broadleaf Forest for Wood Production as set out in at Appendix F of the Standards for Felling and Reforestation. These standards indicate a spacing of 2m x 1.5m spacing, 10 rows of which would yield a distance of ca. 20m. beyond the 60m setback. The area shown in the applicant's Reforestation Map is considerably more than this.

However in light of the specific concerns outlined by the appellants in relation to the specific topography of the site, the FAC recommends that further detail be added to this condition, including specification that the additional planting of mixed broadleaves of native species suited to the immediate site (Alder Birch, rowan, willow, oak) be planted to as to achieve a tiered edge rising to the height of the mature spruce, and that specific reference be made to the Reforestation Map.

The FAC examined the submissions made during the licence application process. In addition to the concerns relating to loss of light and setback from aquatic environments, which are addressed elsewhere in this letter, other concerns included setback distances arising from fire risks. Having regard for the grounds of appeal and the Statements of Fact provided by the DAFM, the FAC is satisfied that these concerns were adequately considered by the DAFM and no error was made in the processing of the licence in this regard.

Impacts on water quality, consideration of European Sites, and setbacks from watercourses.

Concerns are raised in the grounds of appeal with respect to the location of a fuel tank in plot 4. The DAFM note in their Statements of Fact that the proposed location is not within 50m of an aquatic zone or 20m of a relevant water course. The FAC had regard for the maps provided in the application and the which form part of the NIS. The FAC is satisfied that the proposed location of the fuel storage is in line with the required setbacks set out in the Standards for Felling and Reforestation and does not represent a significant threat to water quality.

The adequacy of mapping provided during the application process is questioned in the grounds of appeal. The grounds also assert that the cumulative effect of the project on certain European conservation sites is not adequately assessed. It is stated in the grounds that no reference is made to dilution factors in screening out certain named sites, and that there is a direct hydrological connection to those sites. It is also stated that existing crossing points over a watercourse are not marked on the application maps.

The DAFM in their statements of fact submit that the harvesting map included maps showing the relevant water courses, including a watercourse running from Plot 1 to Plot 2, and that the map shows the proposed crossing point for the licence application under consideration. DAFM also submit that the licence conditions specifically address the protection of water quality and the prevention of rutting. DAFM also submit that an Appropriate Assessment took place, and that this considered issues of forestry cover and in-combination effects.

The FAC noted that the applicant submitted several maps as part of the Pre-Approval Supporting Documentation for On-Line Forestry Applications, together with an NIS which also includes a number of maps. The pre-approval documentation notes the location of drains, aquatic zones, a temporary crossing point, and watercourses within the site. Similarly, the NIS (at pages 18 and 19) provides a map which shows relevant watercourses that form part of the Mullaghbaun river system

which in turn forms part of the EPA recorded River Diffagher (Diffagher_010) waterbody. The NIS notes that the Diffagher_010 was recorded by the EPA as having a Good Status in the 2013-2018 Water Framework Directive monitoring period. Based on the above and having regard to the statement provided by the DAFM that the relevant water crossing for the proposed project has been marked on the mapping provided, the FAC is satisfied that the licence application contained sufficient detail in relation to water conditions on the site.

The NIS also notes (in Appendix 3, at page 16) that the current planting contains no buffers in existence adjacent to any of the watercourses within the forestry site, with forestry planted right up to each stream or river. There is an obligation to the licencing authority to ensure that the objectives of the Water Framework Directive are met, and that no deterioration of water quality occur as a result of works. The licence contains a requirement that the licensee ensure that all felling and planting operations are carried out in accordance with a range of guidelines and the Code of Best Forest Practice in Ireland. There are further requirements that the felling project and all associated operations shall be carried out and completed in accordance with the measures set out in the Standards for Felling and Reforestation. Section 6.1 of those standards require the identification of water exclusion zones, and specific actions within those zones to protect water quality, including a prohibition on the use of harvesters (other than where trees can be reached using the harvester arm from outside the zone), and the use of chainsaws within the zone. In light of the foregoing, the FAC is satisfied that the establishment of setbacks from watercourses as proposed will contribute to the further improvement of water quality in the relevant waterbodies.

However, in a response to a Statement of Fact provided by DAFM, one appellant observes that the 5th condition in the licence under the heading Inspector's Conditions stipulates a setback only for the watercourse on the eastern boundary. The appellant contends that a setback should also be stipulated for the water course that flows through the site, between plots 2 and 3. The presence of this watercourse is noted in several documents submitted with the application, as noted above. It is also acknowledged in the Statements of Fact provided by DAFM. While the licence conditions require adherence to various standards that include setbacks for watercourses, the FAC considers that if a setback condition is stipulated for one noted watercourse, it should apply to all the noted watercourses on the site, and this omission represents an error in the processing of the licence. The FAC also notes the appellant's contention that the banks of this watercourse are steep, which the *Standards for Felling and Reforestation (DAFM 2019)*, require a setback distance of 15m. The FAC is therefore setting aside the decision of the Minister and remitting to DAFM to determine the adequacy of setback distances for all watercourses on the site.

The DAFM carried out a screening for Appropriate Assessment, and subsequently made an Appropriate Assessment Determination. This process included an in-combination assessment of the project which considered forest cover in the immediate area and within the Diffagher_010 waterbody, which at 36% is higher than the national average. The appropriate assessment process identified and screened out three European Sites. These sites were identified on the basis of a 15km radius zone, and no further sites were deemed necessary for consideration. In the grounds of appeal, it is submitted that as there is a hydrological connection to the River Shannon, the screening exercise should have considered those European sites that are part of the River Shannon system, with named sites provided as examples. The FAC note that the nearest downstream site to the project is the Lough Forbes Complex SAC [1818] which lies at a hydrological distance of ca. 69km, and which has a number of habitat types listed as its qualifying interests. This is followed by the

Lough Ree SAC [0440] which lies at a hydrological distance of ca. 89km, and which has a number of habitat types and the otter listed as its qualifying interests. In light of the Good status of the Diffagher_10 waterbody, and as the project site is significantly outside the foraging range of the otter, and as the River Shannon passes through two substantial waterbodies (Lough Allen and Loughs Boderg/Boffin) before reaching the European sites, the FAC is satisfied that no error was made by DAFM as result of not including European sites outside the 15km criteria stated in the AASD.

Access to the plots contained in the project site.

The FAC considered the grounds of appeal from two of the appellants regarding lack of access to plots contained in the project site and had regard for the Statements of Fact provided by the DAFM which stated that access to plots 2,3,4 and 5 is in place via an existing forest road, and that access to plot 1 may be the subject of a future licence application. The FAC is satisfied that no error was made by DAFM with regard to issues of site access in this instance.

Archaeological Considerations

The FAC considered the grounds of appeal which relate to archaeological considerations, and the statement of fact received from the DAFM, which included a submission from the Archaeological section of that Department.

The DAFM, in its Statements of Fact argue that no regulations exist beyond the use of grant schemes to allow the imposition of general maintenance obligations on a forest owner. It is submitted in the grounds of appeal that there are contradictions in the licence which would allow trees planted in the rotation to be felled to remain in situ within archaeological exclusions zones following felling of the site, that such trees would be vulnerable to wind-throw placing archaeological features at risk. It is also submitted in the grounds of appeal that there is no mention of mechanisms to control the removal of the natural regeneration of the Sitka Spruce which is to be replanted.

The FAC note that the licence conditions exclusion zones around a named monument and certain other archaeological features such as farm buildings, and that no felling in the excluded areas take place pending a thorough field inspection by a suitably qualified archaeologist retained by the licence holder (or their consultant forester) and the preparation of a plan outlining the most appropriate means to fell and remove trees from on and around the monument. The FAC observes that while this condition precludes the removal of trees pending an inspection and plan, it does not mandate or require an inspection and plan.

The Standards for Felling and Reforestation (DAFM 2019) at section 6.3 state (emphasis added):

Felling licence conditions may also include a requirement that a pre-works inspection is undertaken by an archaeologist and a more detailed plan prepared for the removal of trees from, on and around any specific site, monument, or structure, and with prior approval by the Forest Service of DAFM and the National Monuments Service of DCHG.

The FAC also notes that the NIS provided by the Applicant, at page 16, observes that wind-throw has occurred on the site. Based on the foregoing and in light of the archaeological features on the site, the FAC is of the opinion that a licence condition at the time of felling is an appropriate mechanism to control regeneration. The FAC considers that the execution of an archaeological survey and the development of a plan that is submitted in advance to DAFM to remove trees that are present within

archaeological exclusion zones (where appropriate and based on expert opinion) should be a condition of the licence, and that failure to do so represents an error in the decision-making process. The FAC is therefore setting aside decision of the Minister to grant the licence and remitting to the DAFM to consider the conditions relating to the protection and preservation of archaeological features on the project site by way of a pre-works inspection undertaken by an archaeologist and the submission of detailed plan for the removal of trees from, on and around archaeological features, for prior approval by the Forest Service of DAFM and the National Monuments Service of the Department of Housing, Local Government and Heritage.

A number of issues are raised in grounds of appeal relating to the identification of archaeological features. The FAC notes that prior to the submission of Statements of Fact, a DAFM Archaeologist visited the site, and confirmed the details used during the desk based archaeological evaluation of the site during the processing of the licence. The FAC also notes the details provided in the Statement of Fact, including the caution exercised in the Archaeological report provided by DAFM during the licensing process through the extension of certain exclusion zones to 30m from a standard 20m to account for local variance. In the archaeological component of the Statements of Fact, the possible archaeological features highlighted by the appellants are discussed and the absence of any record of these possible features on the Record of Monuments and Places, or the Sites and Monuments Record, is highlighted. The presence of these features was raised by the appellants during the appeal process and were not highlighted to the DAFM during the licensing process. With reference to the possibility of there being a 'sweathouse on the site', the archaeologist describes this as:

The 'structure' appears to consist of a loose pile of stone (max approx. dimensions 2m E-W, 1.75m N-S, h. 0.6m) with no obvious indication of worked stone, masonry, or bonding material. It is located at the base of a hill on the banks of a narrow stream/drain. While this would be a typical location for structures of this type, it is far from a clear-cut example of the same. In order to say with any degree of certainty that it is an antiquity there would need to be significantly more archaeological investigation (including possibly excavation).

In recommending that the conditions of the licence be varied by the FAC to exclude this site, the DAFM Archaeologist does so "out of an abundance of caution".

Based on the information above the FAC finds that the DAFM did not make an error in the processing of the licence with respect to the identification of archaeological features on the site based on the information available at the time of the processing of the licence. However, the FAC has decided to set aside and remit the DAFM's decision to issue felling licence TFL00652821 for other reasons as outlined elsewhere in this letter. In these circumstances, the FAC recommends that the DAFM consider the information provided in the Statements of Fact by the DAFM Archaeologist in respect of the possible 'sweathouse' in any future consideration of the licence application.

The appellants raise a number of issues such as a reference to "the steepness of the site" in the portion of the Statement of Fact prepared by the DAFM Archaeologist and the reference to the Department of Community, Heritage and the Gaeltacht. In relation to the former, the FAC considers that this reference is relation to component of the site, and not the whole site. In relation to the latter, the FAC accepts that this is a typographical error, and any reference to a government department is taken to refer to its successors.

Administrative Grounds

Several grounds are included in the appeals submitted by the appellants that may be characterised as relating to the proper administrative processing of the licence and appeal.

It is submitted in the Grounds of Appeal that there is a current/active information seeking request to the Forest Service, and that would not be completed by the appeal deadline, and that therefore the right to submit further information, information, observations, facts and objections is reserved. Section 14B of the Agricultural Appeal Act 2001 (as amended) provides for the conduct of an appeal, and that the appellants submitted no further information as provided for under that section of the Act. The FAC notes that in the case of one appellant a response was received in relation to circulated documentation and that this was considered by the Committee in making its determination.

It is also submitted in the grounds of appeal that there was a failure to make available, on request, information relevant to the decision-making process, with specific documents including the Inspector's Certification and the EIA screening cited. The FAC notes that three appeals were received, and it is acknowledged in the grounds of appeal that the documentation was provided on the FLV on the 23/11/2021. The FAC also notes that no additional information was submitted by any appellant as provided for under section 14B of the Agriculture Appeals Act 2001 (as amended). The FAC does not consider that any appellant was disadvantaged because of the delay in publishing the documents cited on the FLV.

It is also submitted in the Grounds of Appeal that there is a potential right-of-way on plot 2 that has not been adequately considered. No evidence is provided to substantiate this claim. The FAC has regard for the Statement of Fact provided by the DAFM that no right of way or mapped trackway exists at the point noted by the appellant, and that an unplanted strip visible in aerial photos is likely a firebreak or is to facilitate access and maintenance at the time of planting. The FAC concludes that no error was made by the DAFM with respect to consideration of ownership of the site.

Concerns are expressed in the Grounds of Appeal with regard to the location of a fuel store and its proximity to overhead powerlines. Concerns are also expressed in relation to the possible need for these power lines to be disconnected for the purposes of felling. The DAFM submitted in the Statements of Fact that these are matters for the applicant and ESB Networks. The FAC considers that no error was made in respect of the treatment of power lines on the site by DAFM in the processing of the licence.

Timing of operations

Several grounds of appeal relate to the timing of operations, both in terms of the time of year and the daily operation of the site in terms of start and finish times.

With respect to the time of year at which felling is to occur, it is argued in the Grounds of Appeal that the felling has been approved for spring and summer, which is the breeding period for a number of protected species. The DAFM in its Statements of Fact stated that the applicant is required to adhere to the Wildlife Acts and is also bound by the mitigations set out in the Ecology report.

The FAC reviewed the licence, the application, and its associated documentation, as well as the ecology report. The licence itself makes no reference to the timing of operations during the year, though it does require that felling take place in plots 1 and 2 in 2027; and plots 3,4 and 5 in 2022, adherence to which is required in condition 4 of the licence. The Harvest Plan, which forms the basis

for the licence application states that harvesting will take place “primarily in spring, summer and autumn”, which the FAC is taking to refer to the meteorological seasons between in March and November inclusive¹. Both the Harvest Plan and NIS reference the presence and breeding seasons of Badger (December to May inclusive) and Squirrel (February to September inclusive). In the case of both species operational mitigations are specified, and these are reinforced in the Ecology Report (the nature and precision of which are discussed below).

In light of the foregoing and having regard to the Statements of Fact provided by the DAFM, the FAC considers that no error was made by the DAFM in granting the licence in respect to the timing of operations through the year.

In respect to the submission in the Grounds of Appeal that constraints should be placed on the (daily) start and end times of operations, the DAFM in its Statements of Fact stated that these are operational matters for the applicant. In correspondence, one appellant further disputed this position. The FAC considers that the specification of such start and finish times to be an operational matter and that the DAFM did not make an error in not imposing such a condition.

Ecology

All the appellants raise issues connected with the Ecology of the site.

It is submitted in the grounds of appeal that that approval for species which are not consistent or compatible with the local native woodland type in one plot, specifically that the importation and planting of non-locally grown/sourced non-indigenous trees is not acceptable in the context of the contiguous native woodland riparian habitat. Having regard to the submission provided by the DAFM in a statement of fact that the licence states that species suitable to the site are to be planted and noting that the licence stipulates the use of native species in the plot in question, the FAC considers that DAFM did not make an error in this regard.

It is also submitted in the grounds of appeal that the wording of the red squirrel mitigation lacks precision and clarity, with reference to sections 23(5)(d) of the Wildlife Acts and European Legislation. In its statement of fact in response to the ground of appeal, the DAFM submitted that it is a condition of the licence to adhere to the mitigations in the ecology report dated the 5/11/2021.

The FAC note that the Red Squirrel (*Sciurus vulgaris*) is not a Habitats Directive Annex IV (animals and plant species of community interest in need of strict protection) or an Annex V (animal and plant species of community interest whose taking in the wild and exploitation may be subject to management measures) species, and is not included in NPWS guidance on the strict protection of certain animal and plant species under the Directive in Ireland² (DHLGH, 2021).

The FAC also notes that nothing in the granting of a Forestry Licence removes the obligations of a licence holder to adhere to the requirements of the Wildlife Acts. The FAC reviewed the Ecology Report produced by the DAFM in the processing of the licence, adherence to mitigations contained within which is a requirement of the licence. The FAC observe that the licence states that surveys for red squirrel should be undertaken before work commences on site. The Ecology Report also requires the development of a harvesting schedule, and the examination of Badger setts for activity. In the event of badger activity being found on site, certain exclusion zones are stipulated. The FAC also observed that these requirements are broadly reflective of the proposals of the applicant in the

¹ <https://www.met.ie/climate/climate-of-ireland>

² <https://www.npws.ie/sites/default/files/files/strict-protection-of-certain-animal-and-plant-species.pdf>

submitted Harvest Plan and NIS. However, the FAC also note that there is nothing in the licence conditions or ecology report that require the notification of the results of the surveys for Red Squirrel or observations for Badger, or the subsequent operational actions that are to be undertaken to protect those species, to be notified to the DAFM. Under the particular circumstances of the application, where both the potential or actual presence of both species has clearly been identified on site in an NIS prepared by a qualified ecologist on behalf of the Applicant, and confirmed by a Forest Service ecologist in the Ecology Report, the FAC consider this to be an error in the processing of the licence as it is not possible for adherence to the requirements of the Ecology Report to be verified. On this basis the FAC direct that the decision of the Minister be set aside and remitted in order that that the conditions attached to the licence be more clearly articulated for the purposes of post-consent inspection.

Policy and other matters outside the scope of the licencing process

In the Statements of Fact provided by the DAFM, a number of the grounds of appeal are addressed on the basis that issues raised are of a policy nature or are outside the scope of the licencing process.

The issue of whether the site which is the subject of the application is suitable or sustainable as a conifer plantation is raised in the grounds of appeal. It is also asserted that the conditions of the licence will repeat and replicate negative impacts that the appellants assert have already occurred on the natural and social environment. In considering these grounds, the FAC noted the responses received from the consultation bodies. In the case of Leitrim County Council, the site is observed to be in a High Capacity Area in terms of Landscape Capacity as per the County Development Plan 2015-2021. NPWS made no specific observation in terms of the site and referred instead to the general obligations of a consent authority. The FAC concludes that the issues raised are of a policy nature, and that no error was made by the DAFM in the processing of the licence in relation to these grounds.

The Grounds of Appeal include concerns regarding the absence of conditions for the re-establishment or restoration of the traditional hedgerows which have been damaged or destroyed both within and forming the boundary of lands in previous planting of the site. The FAC agree that these are issues that fall outside the legislative scope of the licencing process and conclude that DAFM made no error in this regard in the processing of the application.

Conclusion

Based on the evidence before it, as outlined above, the FAC concluded that the DAFM made a significant error or series of errors in making the decision in respect of licence TFL00652821. In these circumstances, the FAC has decided to set aside and remit the decision regarding licence TFL00652821 to:

- Readvertise the application with reference to the application area of 16.5ha.
- Determine the adequacy of setback distances for all watercourses on the site.
- To consider the conditions relating to the protection and preservation of archaeological features on the project site by way of a pre-works inspection undertaken by an archaeologist and the submission of detailed plan for the removal of trees from, on and around archaeological features, for prior approval by the Forest Service of DAFM and the National Monuments Service of the Department of Housing, Local Government and Heritage.

- Consider the conditions relating to the protection of badger and red squirrel and articulate these more clearly to facilitate post-consent inspection.

- To consider the reference in the AASRD to Lough Arrow, and if found to be in error, correct.

The FAC also recommends that in the event a decision is made to grant the licence, the DAFM consider:

- Providing further detail in relation to the setback from the house to the west of the site, including specification that the additional planting setback and associated area as shown in the applicant's Reforestation Map be planted so as to achieve a tiered edge rising to the height of the mature spruce, and that specific reference to the Reforestation Map be included in the licence condition.

- To consider the observations made by the DAFM Archaeologist in relation to a possible "sweathouse" on the project site.

Yours sincerely,

John Evans on Behalf of the Forestry Appeals Committee

