



7<sup>th</sup> July 2023.

**Subject:** Appeal FAC 125/2022 regarding CN88682

I refer to the appeal to the Forestry Appeals Committee (FAC) in relation to the above licence granted by the Minister for Agriculture, Food and Marine (DAFM). The FAC established in accordance with Section 14 A (1) of the Agriculture Appeals Act 2001, as amended ("the Act"), has now completed an examination of the facts and evidence provided by the parties to the appeal.

**DECISION.**

Having regard to the evidence before it, including the Department of Agriculture, Food, and the Marine (DAFM) record of the decision, the Statements of Fact (SoF) provided by the DAFM, all materials on file, the notice and grounds of appeal and submissions and in particular the following considerations, the FAC has decided to set aside and remit the decision of the Minister regarding licence CN88682.

**THE LICENCE.**

Licence CN88682 is for 4.03 Ha. of afforestation in the townland of Aughry, Dromod, Co. Leitrim.

The application for the licence was submitted to the DAFM on the 22<sup>nd</sup> of April 2021. A decision approving the licence was issued on the 28<sup>th</sup> of August 2022 with conditions including compliance with DAFM Technical Standards, Tree/Hedgerow retention, compliance with the conditions of the ecology and archaeology reports attached to the licence.

**FORESTRY APPEALS COMMITTEE.**

A hearing was held remotely at a sitting of the FAC held on the 22<sup>nd</sup> of June 2023 which considered the appeals and the processing of the licence as it relates to the decision to issue the licence on the 28<sup>th</sup> of August 2022

The FAC members present were: Mr. Seamus Neely (Chairperson), Mr. Luke Sweetman and Mr. Iain Douglas.

FAC Secretariat: Ms. Vanessa Healy and Ms. Ciara Murphy.

**BACKGROUND.**

The proposal consists of 4.03 Ha of afforestation in 2 Plots, Plot 1 is GPC 9 NWE and Plot 2 is GPC 10 NWE.

The site is located in the townland of Aughry, Co. Leitrim in the village of Dromod on the shore of Lough Bofin. The afforestation lies in two adjoining plots. On the western boundary of both plots is

Lough Bofin, the northern boundary of both plots is in pasture and the southern boundary of plot 2 is formed by Lough Bofin and the eastern boundary of this plot adjoins the grounds of a dwelling.

The site lies in the Water Framework Directive Upper Shannon Catchment and the Shannon [Upper]\_SC\_040 Sub-catchment where Forestry is not identified as a pressure. The River Sub-Basin is the Shannon (Upper)\_070 and the Lake waterbody is Lough Bofin which was recorded as Poor status (2013-2018) and At Risk in the 3<sup>rd</sup> cycle. The Groundwater body is Kilglass Dromod IEGBNI\_SH\_G\_120 which had Good status (2013-2018) and was Not at Risk in the 3<sup>rd</sup> cycle. The closest river waterbody is a 1<sup>st</sup> Order stream IE\_SH\_26S021415 some 274 m east of the site which had Moderate Status (2013-2018) and was At Risk in the 3<sup>rd</sup> cycle.

The site description given is that the site soils are Surface water Gleys/Ground water Gleys and Mineral Alluvium. The average slope across the site is moderate, at 3% and ranges from 0% to 6%. Vegetation is described as Improved Grassland and Wet Grassland. An area of Annex I Habitat vegetated with Molinia Meadow was found and omitted from the proposal. The site adjoins an aquatic zone, Lough Bofin.

The application documents available to the FAC on the Forest Licence Viewer (FLV) included a location map, a fencing map, a Biomap dated 29/04/2021 (referred to by DAFM as a revised biomap), and a Pre-Approval Submission Report.

On the 4<sup>th</sup> of May 2021 the DAFM referred the licence to (i) Leitrim County Council which replied on the 17<sup>th</sup> of June 2021 stating that the site is located in High Visual Amenity lands with a Medium capacity for forestry, the site lies within a proposed Natural heritage Area (pNHA), to liaise with the county council and to comply with DAFM Guidelines; (ii) An Taisce which replied on the 1<sup>st</sup> of June 2021 expressing concerns about drain setbacks and that the percentage of Areas for Biodiversity Enhancement (ABE) does not meet the Environmental Requirements for Afforestation Guidelines (2016) for ABE; (iii) NPWS which replied on the 22<sup>nd</sup> of June 2021 stating that there was no ecology input into the application as required by the NWE scheme, the site is located within the Lough Boderg and Lough Bofin proposed Natural Heritage Area (pNHA) a Habitat Survey was required, that there are suitable areas for ground nesting bird identified (snipe) and an appendix containing the general requirement for Appropriate Assessment (AA).

On the DAFM file there is an Inspector's Certification Report, an Inspector's Assessment to Determine EIA Requirement, an Inspector's Appropriate Assessment Screening Report (AASR) Site Details & Plots Reports all dated the 19<sup>th</sup> of August 2021, a DAFM Ecologist Appropriate Assessment Screening and Determination (AASD) dated the 17<sup>th</sup> of July 2021, DAFM Ecology Report dated the 17<sup>th</sup> of July 2021, a DAFM Ecologist's Habitat Survey dated 14<sup>th</sup> of June 2021 and a DAFM Archaeologist's Report dated 2<sup>nd</sup> September 2021.

The Inspector's Certification Report recommends approval of the licence subject to a number of conditions including; (1) the retention of all existing trees and hedgerows within the site; (2) The carrying out and completion of the afforestation in accordance with the measures set out in the Environmental Requirements for Afforestation (ERA) and the Forestry Standards Manual (FSM); (3) Compliance with conditions attached to the Ecology Report; (4) Compliance with specific archaeological protection requirements.

The Inspector's Assessment to Determine EIA Requirement concluded that the proposed afforestation is not required to undergo EIA.

The licence was Desk assessed only although the site was inspected by the DAFM ecologist (Habitat Survey dated 14<sup>th</sup> of June 2021).

The file records that there was one third-party submission on the licence.

#### **THE APPEAL.**

There is one third-party appeal against the decision to approve this licence application. The grounds of appeal are summarised as follows:

1. That there was a lack of due process in the processing of the decision arising from the licence being issued on the 9<sup>th</sup> of September 2022 but this not being made know to the public until the 12<sup>th</sup> of September 2022.
2. That there are Application Errors – the exclusion of an area is a Material Change to the application.
3. That there is non-compliance with Section 5(2) of the Forestry Regulations (Mapping deficiencies with Hedgerows, Drains, Flood Risk, Other relevant Features incl. Archaeology & Townland boundaries). The modified biomap was not made available.
4. That licence condition 2 cannot be understood by the layperson and that licence conditions are not consistent with the reasons for the condition,
5. That liaison with Leitrim County Council not conditioned.
6. The Ecology Report makes no reference to snipe or bats.
7. That the details of woody weed removal have not been adequately described.
8. EIA Screening. The cumulative impact assessment is flawed in law, there is inadequate ecological/environmental assessment (HNV farmland, BIOFOREST, there is no assessment of impact on Annex IV species [bats], impact on the landscape, impact on water quality, impact on the pNHA.
9. That the Appropriate Assessment is flawed, L. Forbes SAC and Ballykenny/Fisherstown SPA should not have been screened out.
10. Right tree in the right place for the right reasons.

#### **CONSIDERATION BY THE FAC.**

The FAC, at the sitting of the FAC on the 22<sup>nd</sup> of June 2023, had before it the full DAFM record of the decision, the notice, and grounds of appeal and submissions, the Statement of Fact (SoF) provided by the DAFM and all materials on file. The FAC noted the request for an oral hearing by the appellant. Having reviewed all the documentation and submissions, including those of the appellant, the FAC considered that there was sufficient information to enable it to assess and determine the appeal without recourse to an oral hearing.

#### **DAFM STATEMENT OF FACT.**

The SoF provided by the DAFM for the appeal, dated the 13<sup>th</sup> of April 2023 confirms the administrative details of the licence application, and indicates that the licence application was desk assessed only. The SoF states that the DAFM was satisfied that all criteria in its standards and procedures were adhered to in making the decision on this licence application.

There is also a statement from the District Forestry Inspector (DI) dated the 8<sup>th</sup> of September 2022 confirming that the AA process was carried out using the procedures of November 2019, that the standard operating procedures were applied, and contains a response to the grounds of appeal.

Also, in the SoF is a response dated the 7<sup>th</sup> of March 2023 from the DAFM ecologist to the grounds of appeal that relate to ecology.

There is a post appeal submission from the appellant received on the 23<sup>rd</sup> of May 2023 which responds to DI's SoF and the ecologist's comments.

## **GROUNDS OF APPEAL.**

### **Notification.**

The grounds of appeal submit that there is a lack of due process arising from the date the decision was made and the date the decision was published which does not comply with the Aarhus Convention. The FAC noted that the date of the decision to grant the licence was the 24<sup>th</sup> of August 2022 and that the public was notified of the decision the following day, 25<sup>th</sup> of August 2022 and that in any event the licence was available online as soon as the decision was made and that members of the public including the appellant who had made a submission were made aware on the day of the decision. The FAC does not consider that there was undue delay and notes that the appellant has submitted an appeal for consideration by the FAC. The FAC is satisfied that the DAFM has complied with its obligations under the Forestry Act and Regulations with respect to notification of the public of its decision and no error has occurred in this regard.

### **Application Errors.**

This ground of appeal contends that modification of the application by the exclusion of an area from planting was a material change to the application and should have been subject to further public consultation. The FAC noted that the omission of the area in question was at the direction of the DAFM during the processing of the licence to avoid damage to an Annex I habitat and was not initiated by the applicant. The FAC is satisfied that the nature of the proposal remains the same i.e. Native Woodland Establishment, the boundaries of the proposal remain the same, and it is clear from the decision that issued that the DAFM, having considered the current criteria for afforestation would not have reached a different conclusion had the area been omitted from the original proposal. The FAC is satisfied that the omission of the Annex I habitat from the area to be afforested as required to comply with the conditions of the ecology report is not a material change to the nature of the proposed project.

### **Forestry Regulations 2017**

This ground of appeal contends that the biomap submitted with the licence application is "*not legally compliant*" in that it fails to show hedgerows and refers to the ecology report which states that "*the hedgerows marked along the south-eastern, southern and western boundaries appear to be the boundary edge of a strip of lakeshore broadleaf woodland ca. 20 or more meters in width*". Notwithstanding this finding of the ecology report, the FAC noted the biomap dated the 29<sup>th</sup> of April 2021 shows the hedgerow along the northern boundary of the site.

This ground of appeal also contends that the biomap does not comply with Article 5(2)(a)(vii) of the Forestry Regulations 2017 (as amended) "*any other features which may be relevant to the application*" and states that agricultural drains, flood risk, a cultural feature (a townland boundary), individual trees and an area of Annex I habitat (Molinia Meadows) fall within the category of Article 5(2)(a)(vii).

The FAC noted that under Article 5(2)(a) of the Forestry Regulations 2017 (as amended) an application for an afforestation licence must be accompanied by an Ordnance Survey map or other map acceptable to the Minister which must show inter-alia; public roads, forest roads, aquatic zones, wayleaves, archaeological sites or features, hedgerows, and any other features which may be relevant to the application.

The FAC noted the response of the DAFM Ecologist to the grounds of appeal dated of 07/03/2023 with regard to the agricultural drains and relevant watercourses. The FAC noted that the biomap of 29/04/2021 does not show any relevant watercourse on the site and that in the remarks section on the biomap there is the following comment "*Agricultural drains on site are heavily vegetated but we will still leaving a 5m setback.*" The FAC is aware that in Table 1 of the ERA - Water features requiring

water setbacks, it is noted that “not every watercourse may be a ‘relevant watercourse’. For example, a well-vegetated agricultural drain on moderately sloping ground may not be a relevant watercourse.” It appears that the applicant was aware of the drains but did not consider them to be relevant watercourses. It was not until the DAFM Ecology Report of 14/07/2022 that the drains were determined to be relevant watercourses.

In view of the different opinions as to the status of the drains the FAC considers that the DAFM should have made the applicant aware of the fact that the drains were determined to be relevant watercourses by a Further Information request requiring a revised biomap showing the same.

The FAC noted that while the body of the Ecology report refers to the DAFM revised biomap at Appendix A of that report, the conditions in the report, and which compliance with is a requirement of the licence, makes no reference to the revised biomap. The FAC considers that the lack of a specific reference to the revised biomap in the conditions represents a serious error in the processing of the licence.

The FAC noted that the regulations do not give any direction as to what constitutes “any other features which may be relevant to the application” it is therefore the responsibility of the applicant to determine initially what other features may be relevant to the application and that the DAFM in processing the application can direct the applicant to revise that biomap to include features which it considers relevant to the application. The FAC noted that the appellant’s submission on the licence dated the 10<sup>th</sup> of May 2021 made no reference any deficiency in the biomap dated 29/04/2021 and uploaded on the FLV on the same date. The FAC noted that the site was inspected in the field by the DAFM Ecologist and that the Ecology Report of 14<sup>th</sup> of July 2022 contains a revised biomap showing relevant watercourses, notable individual trees, Annex I Molinia Meadow and hedgerows. In view of the forgoing the FAC does not consider the biomap on the FLV submitted the 29<sup>th</sup> of July 2021 is in error.

#### **Licence Condition 2.**

This ground of appeal contends that Condition 2 of the licence cannot be understood by the layperson. Condition 2 states:

*“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). [Note: These documents may be found on the Department’s website, alongside the amending or updating Circulars, which are arranged by year.]”*

The FAC understand that this is a standard condition used in all afforestation licences. The substance of the ground of appeal refers to the understanding of the contents of the two documents, the updating of the two documents, and the availability of circulars on the DAFM website and as such not all of the matters are within the remit of the FAC. In dealing with the actual wording of the condition the FAC considers that the condition, taken within the ordinary meaning of the words, can be readily understood by a layperson demonstrating average judgment. The FAC considers that requiring adherence with standards of good practice is common and accepted practice across a number of areas including Forestry. The FAC is not satisfied that the DAFM has erred regarding this ground of appeal.

The appellant submits that the conditions of the licence are not readily understood by the lay person. The FAC had regard for the submission by the DAFM in its SoF that the conditions are clear and well-reasoned and follow standard operating procedures. The FAC noted that the Forestry Act of 2014 makes several references to the inclusion of conditions in a licence. Section 7 of the Act provides for

the Minister to grant a licence, to revoke a licence for reasons that may include non-compliance with any conditions, that where the applicant is not the owner that the conditions are binding on the owner. The condition that is referred to in the grounds of appeal relates to standards of good practice that are published and available on the DAFM website. On this basis the FAC is satisfied that conditions attaching to a licence are for the purposes of ensuring compliance on the part of an applicant or owner of lands on which a licence is granted, and that a basic understanding of forestry operations, including those relevant standards and circulars that may be in effect, can reasonably be assumed. The FAC is not satisfied that an error was made in the granting of the licence in relation to this ground of appeal.

In relation to the ground of appeal that the licence conditions are not consistent with the reasons for the condition, specifically that there is no record of existing trees that are to be retained, the FAC had regard for the SoF provided by the DAFM, the application, and the licence conditions. The FAC noted that the licence makes specific reference to the retention of all trees and hedgerows. The application was accompanied by a biodiversity and other maps from which the location of hedgerows and treelines can be discerned. The FAC is not satisfied that an error was made in the granting of the licence in relation to this ground of appeal.

**Conditions of Leitrim County Council not included in the licence.**

This ground of appeal contends that the suggested condition from Leitrim County Council requiring liaison with the county council regarding access, use of public roads, weight restrictions, remedial works etc. should have been included as a condition of the licence. The FAC noted that the that the DAFM is the competent authority for issuing forestry licences and that the local authority has recourse to the Roads Act 1993 (as revised) and is not satisfied that the DAFM has erred regarding this ground of appeal.

**The Ecology Report makes no reference to snipe or bats.**

This ground of appeal contends that the Ecology Report makes no reference to the potential impact of the proposed afforestation on snipe or bats. The FAC noted that the NPWS stated that there are "*Areas within the application site were considered suitable for ground nesting birds such as snipe (which is currently red listed)*" and the inspection by the DAFM ecologist found no evidence of snipe or other Annex 1 bird species on of the site. The FAC noted the DAFM ecologist's response to the grounds of appeal and that the licence conditions require retention of existing trees and hedgerows on the site, a 5m unplanted, habitat setback along hedgerows is required by the ERA, and retention of scrub. In addition, the conditions require a 10m unplanted setback adjoining the existing woodland. The FAC noted that there is no convincing evidence submitted that snipe or bat are present on the site or would be adversely impacted by the proposal. The FAC is not satisfied that the DAFM has erred regarding this ground of appeal.

**Details of woody weed removal have not been adequately described.**

This ground of appeal contends that the details of "woody weed" removal on the site have not been described adequately. The FAC noted the DI's response to this ground in the SoF, that "woody weed" removal is a standard operation in afforestation and agricultural sites in general, and that all existing trees and hedgerows within the site are to be retained. The FAC understands the terms "scrub" and "woody weed" are commonly employed on forestry and land management practices generally in Ireland and describe different plants, with "scrub" typically referring to low growing tree species such as willow (*Salix* spp.) and hazel (*Corylus avellana*) while woody weeds might describe furze/gorse (*Ulex* spp.) or bramble (*Rubus* spp.) amongst other non-tree plants. The FAC is satisfied that the use of this terminology is clear, and no error was made in relation to this ground of appeal.

### **EIA Screening.**

The FAC considered the ground of appeal that the Assessment to Determine EIA Requirement does not give adequate consideration to cumulative and landscape impact and other issues and is inadequately reasoned. In so doing, the FAC had regard to the SoF provided by DAFM. The decision before the FAC relates to the afforestation of 4.03 Ha which is substantially below the 50 Ha threshold for mandatory EIA as set out for afforestation applications in the Irish Forestry Regulations 2017 (S.I. 191 of 2017). The regulations also provide that the EIA must be carried out for projects below the specified parameters where the Minister considers such development would be likely to have significant effects on the environment. In order to determine this, the DAFM carried out an Assessment to Determine EIA requirement. This considered the project across a wide range of categories, including Archaeological, Land Use, Water, Protection of FPM, Landscape, Designated Habitats and Cumulative Effect and concluded that an EIA is not required.

### **Cumulative impact assessment**

'The grounds of appeal question the DAFM criteria for cumulative impact and the appellant submitted a map titled "Cumulative forestry around CN88682". The FAC noted that the DAFM in their considerations on the "Cumulative effect and extent of project" recorded answers to questions in the Assessment to Determine EIA Requirement relating to, existing afforestation of 3 years or less and any proposed afforestation within a 500m radius exceeding 50 Ha., the approximate % forest cover in the underlying waterbody (or waterbodies) and within 5km, both currently and five years previous. The DAFM concluded that based on the extent of the forest cover that the cumulative effect of this proposal was not likely to have a significant impact. The FAC however noted that while the Minister recorded a separate characterisation of plans and projects in the area in the In-combination Report carried out as part of the AA process and dated the 17<sup>th</sup> of February 2022, that this is not explicitly cross-referenced in the EIA Determination. The EIA Determination itself only refers to forestry projects and references a "Date Inspection Certified" of the 19<sup>th</sup> of August 2022. While the FAC would consider it reasonable that the record as a whole should be considered and that the reasons for considering that the proposal is not likely to have a significant effect on the environment might be found in separate documents, based on the foregoing it is not apparent if adequate consideration was given to cumulative effects (including non-forestry projects) when making the determination for EIA requirement. The FAC considers this to be an error in the processing of the application.

### **Inadequate ecological/environmental assessment**

#### *High Nature Value Farmland.*

This ground of appeal contends that the site, having been identified as being "*dominated by wet grassland GS4*" in the AASD, should be considered as High Nature Value Farmland and planting of such areas is contrary to state aid provisions. The FAC is not satisfied that the record suggests that the lands might be classified as semi-natural grassland. The role of the FAC is to consider whether the DAFM made a serious or significant error, or a series of errors in making the decision under appeal, and whether that decision was made in compliance with fair procedures. The FAC can address only the grounds of appeal that relate directly to the licence for afforestation under Article 7 of the Forestry Act 2014 and the Forestry Regulations 2017 and does not consider that compliance with Rural Development Programmes or the provisions of State Aid fall within the remit of the FAC itself to determine. The FAC is not satisfied that the DAFM has erred in the making of the decision in this matter.

#### *Hedgerow Setback.*

The appellant also contends that the minimum 5m setback from hedgerows specified in Section 2.5.4 of the Environmental Requirements for Afforestation 2016 is inadequate and that the BIOFOREST Report recommends a setback of 7m to avoid the forestry suppressing the growth of hedgerows. The

FAC noted that the biomap dated 29/04/2021 shows a setback from hedgerows as 5m. The FAC considered that the Environmental Requirements for Afforestation state that all hedgerows must be retained and

*“A habitat setback (5 metres minimum) should also be considered in relation to particular hedgerows on-site, to ensure their continued presence as the surrounding canopy develops. This decision should be informed by the quality of the hedgerow (in terms of its age, species composition and structure), its landscape importance, and other attributes (e.g. whether or not the hedgerow represents a townland boundary or if it is associated with another habitat such as a stream)”*

The FAC further noted that the first part of Condition 5 of the licence requires that the afforestation and all associated operations to 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 application has identified hedgerow setbacks in the mapping provided and the FAC considers that these must be of 5 metres (minimum) in keeping with the *Environmental Requirements for Afforestation* in addition to the retention of all hedgerows.

The FAC noted that the BIOFOREST Report (Biodiversity in Irish Plantation Forests Final Report<sup>1</sup>) was a research project under the auspices of the EPA and COFORD and includes a recommendation to *“Retain scrub, hedgerows and other marginal and additional habitats and allow for adequate buffer zones”* but is not part of the DAFM Guidelines and Standards.

The FAC is not satisfied that the DAFM has erred in the making of the decision in this matter.

*There has been no assessment of impact on Annex IV species.*

This ground of appeal contends that there has been no assessment of the impact of the proposed afforestation on Annex IV species and specifically refers to bats. The FAC noted that the bat suitability index referred to in the appeal is based on a species-specific roosting characteristics model which shows that broadleaf forest has a positive impact on habitat suitability across all of the species studied in the report. The model is based on the CORINE dataset which is not suitable for field level analysis. The licence conditions require retention of existing trees and hedgerows on the site, a 5m unplanted, habitat setback along hedgerows is required by the ERA, and a 10m unplanted setback across slopes adjoining watercourses. The FAC noted that there is no convincing evidence submitted that any protected species, bat or otter is present on the site or would be adversely impacted by the proposal. The FAC considers that the granting of a forestry licence does not relieve the recipient of their responsibilities under the Wildlife Acts to obtain a derogation licence where works undertaken may result in the deterioration or destruction of breeding sites or resting places of Annex IV species, even where such destruction is not deliberate. The FAC is not satisfied that an error was made in granting of the licence in relation to this ground of appeal.

*Impact on the landscape.*

This ground of appeal contends that there has been no adequate reasoning for the DI's response that the proposed afforestation will not have a significant impact on the landscape and refers to the local authority submission. The FAC noted response to this ground of appeal in Section 4 of the DI's SoF. The FAC further noted that Leitrim County Development Plan 2017-2022 states that in landscape areas with medium capacity to accommodate forestry it *“may be able to accommodate new small scale woodlands provided that their scale, siting and species composition are in keeping with landscape character.”* The FAC noted that the DAFM is the competent authority for issuing forestry licences and

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<sup>1</sup> <https://www.epa.ie/publications/research/biodiversity/ERTDI-Report-51.pdf>



that consideration of local authority's submissions is a matter for the DAFM. The FAC is not satisfied that the DAFM has erred regarding this ground of appeal.

#### *Water Quality.*

This ground of appeal contends that the DAFM "No" response to the question "Does the application and its associated operations threaten the achievement of good ecological status recovery objective set for the underlining waterbody or waterbodies under the WFD River Basin Management Plan?" is an error because the licence contains mitigation measures to protect water quality therefore, by definition, the water quality is threatened. The ground also contends that there is no evidence for the "Yes" response to the question "Will adherence of this proposal to the Forestry and Water Quality Guidelines, and any additional conditions attached to the approval be sufficient to prevent any potential significant impact to aquatic zones and their Q value." The FAC notes that the afforestation licence issued is conditional on adherence to the Environmental Requirements for Afforestation and the Forestry Standards Manual both of which set out a wide range of operational measures to prevent direct and indirect impact on water quality arising from the proposal. The licence also contains specific conditions including permanent undisturbed semi-natural buffers along watercourses on the site which are designed primarily to protect water quality. The grounds of appeal did not submit any specific information regarding effects on water quality related to the proposal. Based on the information available to it, the FAC is not satisfied that the proposal poses a significant threat to water quality or that the DAFM has erred regarding this ground of appeal.

#### *Proposed Natural Heritage Area.*

This ground of appeal contends that the application should have been referred back to the NPWS with the DAFM findings following its carrying out of the NPWS its recommendation in the letter of the 22<sup>nd</sup> of June 2021. FAC noted that the ecology report on file complies with the NPWS requirements and the response of the DAFM ecologist to this ground of appeal that the Lough Boderg/Lough Bofin pNHA was assessed for the impact of the proposal on the pNHA. The FAC is not satisfied that the DAFM has erred regarding this ground of appeal.

#### **Appropriate Assessment.**

##### Screening out of L. Forbes SAC and Ballykenny/Fisherstown SPA.

This ground of appeal contends that the AASD is flawed in its screening out of both the L. Forbes SAC and Ballykenny/Fisherstown SPA. The FAC noted the response of the DAFM ecologist to this ground of appeal and the reasons given for their screening out in the AAD. The FAC is satisfied that both sites were properly assessed in the AASD, however the FAC noted that in both instances it is stated that "it cannot be ruled out, based on objective scientific information, that the project itself (i.e. individually) will have a significant effect on this European Site, in light of the above information and the following rationale:" but that the rationale given is to screen out the site from AA. The response of the DAFM ecologist to this ground of appeal states that it is clear from the reasons given and the following text that it is obvious that "cannot" is a typographical error and that the intention was to screen out those two sites. The FAC considers that this represents an error on the face of the record and as such is a serious error in the processing of the licence application.

##### The In-combination statement is not adequate.

This ground also contends the In-combination statement in the AASD is not adequate as it "*deemed that this project, when considered in combination with other plans and projects, will not give rise to any significant effect on the above European Sites.*"

The FAC noted that the AASD states:

"It is concluded that there is no likelihood of the proposed afforestation project CN85139 itself, ie. *individually*, having a significant effect on certain European Site(s) and associated Qualifying Interests / Special Conservation Interests and Conservation Objectives, as listed in the main body of this report. In light of that conclusion, there is no potential for the proposed project to contribute to any significant effect on those same European Site(s), when considered *in-combination* with other plans and project."

The FAC understands that the consideration of other plans and projects should take place as part of the process to ascertain whether there are likely significant effects arising from the project itself and in-combination with other plans and projects, having regard to the conservation objectives of the European site concerned, and in the assessment of the impact of such effects of the project itself and in-combination with other plans and projects on the integrity of the European site. As stated on the record it appears to the FAC that other plans and projects were only considered after the assessment on the integrity of the project was completed, which would appear to the FAC not to be in keeping with the requirements of Article 6(3) and the Forestry Regulations 2017. The FAC considers this to be a serious error as it suggests that the determination undertaken did not consider effects of the proposal which might not be significant in themselves but could in-combination with other plans and projects result in a significant effect on a European site.

**Right tree in the right place for the Right Reasons.**

This ground of appeal contends that the existing biotic community has not been considered adequately and that planting of exotic conifers does not accord with the existing biotic community. The FAC noted the documentation on file, particularly the proposal to plant Alder, the findings of the *Assessment to Determine EIA Requirement* and the conditions of the licence including the retention of all tree/hedgerow on site, the retention of scrub, the ABE and water setbacks. The FAC further considered the nature of the proposal and the lands on which it would occur. The FAC considers that due regard has been had to the protection of existing biotic community. The FAC is not satisfied that the DAFM has erred regarding this ground of appeal.

**Conclusion**

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal and the SoFs submitted by the DAFM. In accordance with Section 14B of the Agricultural Appeals Act 2001 (as amended) the FAC is satisfied that a serious or significant error or series of errors was made in the making of the decision regarding licence CN88682. The FAC is thus, setting aside and remitting the decision regarding licence CN88682 to the Minister to carry out a new Appropriate Assessment of the project to include an In-combination assessment that takes into consideration whether the effects of the proposal which might not be significant in themselves but could in-combination with other plans and projects result in a significant effect on a European site; to carry out a new Assessment to Determine EIA Requirement to demonstrate that adequate consideration was given to cumulative effects (including non-forestry projects) when making the determination for EIA requirement.

Yours sincerely,

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Iain Douglas,  
On Behalf of the Forestry Appeals Committee