



4th July 2023.

Subject: Appeal FAC 142/2022 regarding CN89190

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 14A(1) of the Agriculture Appeals Act 2001 (as amended) has now completed an examination of the facts and evidence provided by the parties to the appeal.

DECISION.

Having regard to the evidence before it, including the 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 CN89190.

THE LICENCE.

Licence CN89190 is for 12.64 Ha. of afforestation in the townland of Urbal Barr, Co. Leitrim.

The application for the licence was submitted to the DAFM on the 5th of July 2021. A decision approving the licence was issued on the 9th of September 2022 with conditions including compliance with DAFM Technical Standards, Tree/Hedgerow retention, setbacks for slope & water protection, drainage, planting, retention of scrub and liaison with the Leitrim County Council.

FORESTRY APPEALS COMMITTEE.

A hearing was held remotely at a sitting of the FAC held on the 30th of May 2023 which considered the appeal and the processing of the licence as it relates to the decision to issue the licence on the 9th of September 2022.

The FAC members present were: Mr. John Evans (Deputy Chairperson), Mr. Vincent Upton and Mr. Iain Douglas.

Secretary to the FAC: Ms. Vanessa Healy.

BACKGROUND.

The proposal consists of 12.64 Ha of afforestation in 5 Plots, Plots 1 is GPC 8 Alder, Plots 2-4 are GPC3 with Sitka spruce and Additional Broadleaves, and Plot 5 is Sitka spruce.

The site is located in the townland of Urbal Barr, Co. Leitrim, approximately 1.83 km north-east of the village of Ballinagleragh and 3 km south-east of the village of Dowra. The site is accessed via local

roads off the R207 Drumshanbo – Dowra Regional Road. The afforestation lies in three distinct and separate blocks as shown on the DAFM Forest Licence Viewer (FLV), a northern block comprising Plots 2 & 3 which is surrounded by existing forestry and whose western boundary is the Garvesk River. A central block located some 500m to the south is comprised of Plot 5 whose western boundary is a public road and whose northern and eastern boundaries partly adjoining existing forestry. The southern-most block comprises Plots 1 & 4 and is located circa 240m south of the central block. Plots 1 & 4 are bisected by a public road. The Garvesk River bounds Plot 1 to the west, existing forestry adjoins Plot 4 to the north.

The site lies in the Water Framework Directive (WFD) Upper Shannon Catchment and the Yellow Yellow[Ballinagleragh]_SC_010 Sub-catchment where forestry is not identified as a pressure. The River Sub-Basin is the Yellow[Ballinagleragh]_020 and the River waterbody Yellow[Ballinagleragh]_020 (Garvesk river) adjoins Plots 1 & 4 and is circa 55m from the western boundary of Plot 3. It was of Good Status in the period 2013-2018 and is Not at Risk. The Groundwater body is Lough Allen IEGBNI_SH_G_002 which was of Good status 2013-2018 period and is Not at Risk.

The site description given is that the site soils are Surface water Gleys/Ground water Gleys, Peaty Gleys and Blanket Peats. The average slope across the site is moderate, at 1% and ranges from 0% to 26%. The vegetation on site is described as Wet Grassland, Scrub, Wet Heath, Improved Grassland, Acid Grassland and Earth Bank & Hedgerow. The site adjoins an aquatic zone.

The application documents before the FAC included a location map, a fencing map, in-situ photographs of the site notice, a site notice, a biomap, an Appropriate Assessment Pre-screening Report and Pre-Approval Submission Report. As the parties were informed, these were made available to the FAC via the DAFM Forest Licence Viewer (FLV).

The DAFM referred the licence to Leitrim County Council on the 30th of August 2021 which replied on the 5th of October 2021 objecting to the planting on Plots 570 (FLV Plot 4), 569 (FLV Plot 5) and the eastern section of 589 (FLV Plot 3) and stated that in the event of approval being granted to liaise with the county council and carry out the planting in accordance with DAFM standards. The county council also submitted that the lands are not located within a designated area as identified in the County Development Plan 2015-2021 and do not appear to impact on any recorded monument.

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) and Site Details & Plots Reports all dated the 7th of September 2022; a DAFM Ecologist Appropriate Assessment Screening and Determination (AASD) dated the 22nd of August 2022 prepared behalf of the DAFM, and a report from the DAFM Archaeology Section dated the 20th of 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 ERA and the Forestry Standards Manual (FSM); (3). The notification of Leitrim County Council on commencement of the works; (4). A setback with a minimum width of 10m in areas with a slope less than 15% a setback with a minimum width of 15m in areas with a slope great than 15% shall be installed in areas adjoining watercourses at plot 1 to 4; (5). Additional broadleaved planting to be focused on water setbacks a further ten rows of broadleaves of mixed broadleaves of native species suited to the immediate site (birch, rowan, willow, Hawthorn, and oak where appropriate to be planted at water setbacks protect broadleaves from grazing with adequate fencing and/or tree guards to ensure establishment); (6). No new drainage within 20m of watercourses pit planting or

scrap mounding only within 20m of watercourse; (7). A setback with a minimum width of 5 metres shall be installed on one side (if on the outer perimeter) or both sides (if traversing the site) of the relevant watercourse[s] and treated in accordance with Table 5 and Table 6 of the Environmental Requirements for Afforestation. Maintenance; (8). Access tracks at afforestation stage to follow site contours with minimum ground disturbance; (9) Retention of existing scrub habitat as indicated on biomaps a setback of a minimum of 5m shall be installed around scrub habitat. Plant three rows of broadleaves of native species suited to the immediate site (Hawthorn, Hazel, Birch, willow, oak) along the edge of retained scrub habitat; (10). Retention of the existing open habitat indicated as ABE on the biomap located ITM 600958, 824174 (No planting or machine access to be permitted in this area); (11). Compliance with specific archaeological and architectural protection requirements as detailed in the attached archaeological report and illustrative map.

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

The licence was subject of both a Desk and Field Inspection. The Field Inspection took place on the 14th of January 2022.

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 9th of September 2022 and this not being made known to the public until the 12th of September 2022.
2. That there are Application Errors & Inconsistency with Section 5(2) of the Forestry Regulations (Mapping Deficiencies).
3. The Setbacks & Area for ABE are not "the best areas ", there is no building setback consent, the hedgerow setback does not comply with the BIOFOREST Recommendation.
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. Leitrim County Council recommendation has been overruled without explanation. The afforestation is not exempt from planning permission.
6. The Archaeology Report renders the licence commercially in-operable.
7. That the details of woody weed removal have not been adequately described.
8. There is no evidence that potential for impact on the Hen Harrier has been carried out.
9. EIA Screening. The cumulative impact assessment is flawed in law, there is inadequate ecological/environmental assessment (HNV farmland, planting on any areas of deep peat to be excluded), there is no assessment of impact on Annex IV species [bats & otter], impact on the landscape, impact on water quality and that there is no evidence that public comments & concerns were considered.
10. That the Appropriate Assessment is flawed, the Cuilcagh-Anierin Uplands SAC should not have been screened out and that the In-combination statement is not adequate.
11. Right tree in the right place for the right reasons.

CONSIDERATION BY THE FAC.

At its sitting on the 30th of May 2023, the FAC had before it the full DAFM record of the decision as made available on the FLV, the notice, and grounds of appeal and submissions, the SoFs 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 appellants, 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 16th of February 2023 confirms the administrative details of the licence application, and indicates that the licence application was desk and field assessed. The SoF states that the DAFM was satisfied that all criteria in its standards and procedures were adhered to in making the decision on the licence application. The SoF includes information on the administration of this particular licence application, *“that the approval letter which issued on 09/09/2022 should have been for Non-Grant Aided rather than Grant Aided.”*

There is also a statement from the District Forestry Inspector (DI) dated the 8th of November 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 a number of the grounds of appeal.

There are responses to the grounds of appeal on file from the DAFM Archaeologist dated the 10th of October 2022 and the DAFM Ecologist dated 22nd December 2022.

Also on file is a submission by the applicant to the grounds of appeal dated the 8th of March 2023.

GROUND 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 Friday the 9th of September 2022 and that the public was notified of the decision on Monday the 12th of September 2022 and that in any event the licence was available online on the DAFM website as soon as the decision was made and that members of the public who had made a submission, including the appellant, were made aware of this 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. The appeal period is prescribed in law.

Forestry Regulations 2017

This ground of appeal contends that the biomap submitted dated 01/07/2022 with the licence application is *“not legally compliant”* in that it fails to show a *“wayleave”* as required and *any other features which may be relevant to the application*, in this instance the appellant identifies historic buildings, laneways, corn kiln, quarry and two townland boundaries as cultural features as being relevant to the application.

The FAC noted that under Article 5 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 further noted the revised biomap dated 17/09/2022 was submitted showing a wayleave (the publicly available mapping on Landirect.ie shows a wayleave running south-to-north adjoining all Plots) and two nearby archaeological sites.

The FAC noted that the licence application was referred to the DAFM Archaeology section and that condition 5 of the licence requires compliance with the conditions of the DAFM Archaeology Report. The FAC noted that criteria used by the DAFM archaeology section to define “archaeological sites or features” for the purposes of Regulation (5)(2)(a)(v) are set out in the response to the grounds of appeal. The FAC does not consider that the DAFM has erred with regard to this ground of appeal.

Setbacks & Areas of Biodiversity Enhancement (ABE).

In considering the ground of appeal that there is no evidence that Areas for Biological Enhancement (ABE) selected are the “best areas” for such, in accordance with Section 6.2 of the Forestry Standards Manual. The FAC noted that the ABE referred to on the biomaps consist of setbacks for public roads, hedgerows and dwellings as well as the retention of existing open habitat indicated as ABE on the biomap located at ITM 600958, 824174 and that the additional setbacks required to comply with the conditions of the licence also qualify as ABE. The FAC does not consider that the DAFM erred as it relates to this ground of appeal.

The appellant also contends that the setback from the hedgerows is unclear and that the BIOFOREST Report recommends a setback of 7m to avoid the forestry suppressing the growth of hedgerows. The FAC noted that the revised biomap dated 17/09/2022 shows the average width of hedgerows as being 4m. In relation to setbacks, the FAC considered that Section 2.5.4 of the Environmental Requirements for Afforestation 2016 (ERA) states that all hedgerows must be retained and that

“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 ERA and the Forestry Standards Manual (FSM) (as amended by periodic Circulars). The grounds of appeal do not include any site-specific information or provide evidence of the status of the hedgerows. The application includes broadleaf planting adjoining most hedgerows, the species are conditioned to be native broadleaf species generally associated with hedgerows, and the retention of specified areas of scrub. The FAC are not satisfied that a serious or significant error occurred in this regard.

The FAC noted that the BIOFOREST Report (Biodiversity in Irish Plantation Forests Final Report¹) 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 application refers to a utilised building setback of 30 metres at the south of Plot 4. The grounds refer to this as a utilised building rather than a dwelling. In their statement, the DAFM submit that

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

this is not a dwelling, but a temporary structure and that the setback was not a requirement but was proposed by the applicant. The FAC noted the applicant, in the submission of the 8th of March 2023 responding to the grounds of appeal identifies the utilised building as a “temporary dwelling” and that no setback is required. The ERA require a setback of 60 metres from dwellings, unless permission is granted for 30 metres. Two 60 metre setbacks are identified in the application on plots 1 and 3. A setback of 10 metres is required for setbacks from roofed farm buildings and no setback is required from temporary structures. The FAC also noted that the utilised building under question has an Eircode and that the ERA makes no distinction between permanent or temporary dwelling in regard to Utilised Building Setback. In view of the contradiction between the DAFM which says the structure is not a dwelling and the applicant who states that the structure is a temporary dwelling the FAC considers that the DAFM should confirm in writing the exact status of the utilised building in question with the applicant.

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. 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. 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. 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, and 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.

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 documentation contains an initial and revised biomap 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.

Objection of Leitrim County Council to part of the proposed afforestation.

This ground of appeal contends that in the light of the objection of Leitrim County Council to part of the site, a Visual Impact Assessment should have been sought and questions why the council’s

objection has been overruled. In its submission the county council stated that the proposal is not within a designated area in the County Development Plan. The FAC noted that the publicly available mapping on the Leitrim County Council website² shows the site to be outside of areas classified as areas of High Visual Amenity or Areas of Outstanding Natural Beauty in Leitrim CDP 2015-2021 and that while Plot 3 is within the Low Capacity/High Sensitivity classification for forestry, it is surrounded by existing forestry, and that Plots 4 & 5 are within the Medium Capacity/Medium Sensitivity area and that there is existing forestry both adjoining Plot 5 and in the vicinity of Plots 4 & 5. The FAC also noted that the site was inspected, and that the DI considers that the area is not open in character and is not highly visible nor located in open moorland. The FAC noted that the DAFM is the competent authority for issuing forestry licences and that consideration of responses to referrals to local authorities is a matter for the DAFM. The FAC is not satisfied that the DAFM has erred regarding this ground of appeal.

With regard to the appellant's contention that the proposed afforestation is not exempted development by reason of Article 9(1)(a)(iv) of the Planning & Development Regulations 2001-2023 (interference with the character of a landscape) the FAC noted that this restriction only applies to exempted development subject of Schedule 2 of the same regulations and that forestry is not included in Schedule 2. With regard to the appellant's contention that the proposed afforestation is not exempted development by reason of Section 4(4) of the Planning & Development Act 2000 (as amended), the proposed afforestation has been screened and found not to require Environmental Impact Assessment or an Appropriate Assessment therefore the provisions of that section of the Planning & Development Act 2000 (as amended) does not appear to apply. The FAC further noted that the DAFM is the competent authority for issuing forestry licences and is not satisfied that the DAFM has erred regarding this ground of appeal. The FAC makes decisions as an administrative appellate body on certain decisions of the Minister for Agriculture, Food and the Marine as specified in the Agriculture Appeals Act 2001.

The Archaeology Report renders licence inoperable.

This ground of appeal contends that compliance with all of the conditions of the Archaeology Report renders the licence commercially in-operable particularly when the retained areas of scrub are considered. The FAC noted the response to this ground of appeal in the DAFM archaeologist's response dated the 10th of October 2022 which indicates that there are existing agricultural tracks/access points and historic paths, laneways and roads identified in the archaeology report that that are in use as modern farm tracks which can service the proposed afforestation even with conditions in the archaeology report. The Applicant has raised no concerns regarding the operation of the licence. 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 and that foresters are able to identify such areas on site. The FAC is satisfied that the use of this terminology is clear, and no error was made in relation to this ground of appeal.

² <https://leitrimcoco.maps.arcgis.com/apps/webappviewer/index.html?id=8645fc340c8d457b99ce71ce20bd79f1>

Hen Harrier.

This ground of appeal contends that there is no evidence that the proposal has been assessed for its potential the impact on the Hen Harrier, an Annex I species protected under the Birds Directive. The FAC noted that in the appellant's initial submission on the licence application recited the matters that the Bird Directive should be concerned with, but that no mention was made of the presence or otherwise on this site of any particular species of bird. The FAC also noted that the DAFM ecologist's AASD is dated the 22nd of August 2022 and the DI's AASR is dated the 7th of September 2022 but that it was not until the grounds of appeal submitted on the 21st of September 2022 that Hen Harrier was mentioned specifically, therefore as the ecologist's response of the 22nd of December, 2022 points out, no information was available to either the applicant's or the DAFM ecologist that would have raised concerns over the possible impact of this afforestation project on Hen Harrier. The FAC is satisfied that the Appropriate Assessment process was properly undertaken given the knowledge at the time the application was decided.

The DAFM responded to the appeal stating that the site had been field inspected and that there was no reason to refer the application to the NPWS but further expressed the view in its SoF that verification should be sought regarding claims of Hen Harrier nesting activity in the locality. As the decision is being remitted this course of action may be pursued by the DAFM.

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 concerning EIA and is not adequately reasoned. In so doing, the FAC had regard to the SoF provided by DAFM. The decision before the FAC relates to the afforestation of 12.64 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

In reviewing the Assessment to Determine EIA Requirement the FAC noted that questions that relate to cumulative effect only refer to forestry projects and do not consider other types of projects. The FAC also noted that a separate process was carried out for AA which includes an in-combination assessment of other plans and projects which includes a range of other plans and projects in addition to forestry projects. This in-combination assessment was carried out on the 22nd of August 2022 and was available to the DI prior to the Assessment to Determine EIA Requirement of the 7th of September 2022. The FAC consider that while the DAFM are entitled to rely on a reading of the entire file, it would be clearer if it was made explicit that the Assessment to Determine EIA requirement included consideration of the AA In-combination report.

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 application included a detailed description of the site including that some habitats are degraded and that the lands have been subject to grazing. The FAC is not satisfied that the DAFM has erred in the making of the decision in this matter.

Planting on any areas of deep peat should be excluded.

This ground of appeal contends that the AASD identifies blanket peat as being present on the site and that planting on any areas of deep peat should be excluded. The appellant states that the average peat depth is 50cm. The FAC noted Section 9 of the DI 's SoF that the description of the soils in the AASD is based on the National Soils Map which is indicative only and is based on predictive modelling. The FAC also noted that the site had been inspected in the field and that the site inspection found the soils on the site to be primarily surface water gleys with areas of peaty gleys, Plots 3 & 4 were found to be improved peat in agricultural use. A small section of land is stated to be on peat of greater than 50 cm but this was subject to the land types procedures undertaken by a qualified ecologist who determined that it met the productivity threshold established by the DAFM. The land is currently in agricultural use and has been subject to grazing and drainage. On the basis that the site was inspected and subject to an analysis as documented the FAC does not consider that the DAFM erred as it relates to this ground of appeal.

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 and otter and the applicant's Appropriate Assessment Pre-Screening Report of the 17th of September 2021. The FAC noted that the bat suitability index referred to in the AA Pre-screening Report is based on a species-specific roosting characteristics model which shows that broadleaf forest has a positive impact on habitat suitability across all 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 retention of scrub. In addition, conditions require the protection of water courses on the site and the imposition of a 10 or 15m 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 application included a report following site visit prepared by a qualified ecologist which stated,

"The purpose of the investigation was to define the site in terms of conservation status, habitat type and general composition, to identify any Annex I habitats or Annex II species and to take cognisance of the fact that some Annex species may not be present or easily observed and as such should identify if suitable habitat for the species is present."

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 assessment of the impact of the afforestation on the landscape and refers to the local authority submission. The FAC noted that the site was inspected and in Section 9 of the DI's SoF it is stated that the area is not open in character, is not highly visible or located in open moorland. The FAC noted that the DAFM is the competent authority for issuing forestry licences and that consideration of a local authority's submission 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 there is a lack of reasoning for the DAFM response to the question in the Assessment to Determine EIA Requirement *"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?"*. The FAC noted the appellant states the DAFM response to be "Yes" when in fact the response to the question is "No". The ground also contends that there is no evidence for the "No" 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 ERA and the FSM 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.

Public comments & concerns.

This ground of appeal contends that the "No" response to forestry being a local issue in the Assessment to Determine EIA Requirement is in error because the appellant's original submission on the licence and the submission from Leitrim County Council are evidence of forest cover being a significant issue in the locality. The question in the Assessment to Determine EIA Requirement in the section *"Cumulative effect and extent of project"* is *"Is the amount and type of forest cover in this locality known to be a significant issue? If so tick yes and describe in the Inspectors comments box below."* In its SoF, DAFM submits that there were no submissions (or appeals) from anyone living in the vicinity of this site. The FAC is not aware of any restriction on who may make observations or objections in the forestry licencing or appeals processes. The question under consideration does not refer to concerns of those living in the locality, but to concerns regarding the amount and type of forestry in the locality.

However, the FAC noted that the Assessment to Determine EIA Requirement provides an opportunity for the Inspector to make comments and that the use of this would aid the public's understanding of the EIA assessment carried out by the DAFM.

This ground also contends there is no evidence that the DI considered the appellant's original submission on the licence. The FAC noted the DI's "Yes" response to the question *"Comments and issues from the general public and non-governmental bodies were received and examined?"*

The FAC is not satisfied that the DAFM has erred regarding this ground of appeal.

Appropriate Assessment.

This ground of appeal contends that the AASD flawed in its screening out of the Cuilcagh-Anierin Uplands SAC because of natural regeneration of Sitka spruce in the SAC. The FAC noted the DAFM ecologist's response to this ground of appeal that, similar to other projects in the vicinity of the Cuilcagh – Anierin Upland SAC, the threat of natural regeneration of Sitka Spruce was not considered to be at such a scale as to cause significant impact to Cuilcagh-Anierin Uplands SAC. The proposal lies outside and at a remove from the SAC. The FAC further noted that one of the reasons given for screening out the Cuilcagh-Anierin Uplands SAC was the absence of '*other sufficient pathways for impact*' which would include airborne or other vectors. The FAC is not satisfied that the DAFM has erred regarding this part of the ground of appeal.

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 CN89190 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. 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. As noted, the FAC considered a number of errors had been made in the making of the decision and is remitting the decision to the Minister. The FAC considered these grounds to relate to policy matters more generally.

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 CN89190. The FAC is thus, setting

aside the decision of the Minister and remitting it to require the DAFM to; carry out of a new Appropriate Assessment screening 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.

Yours sincerely,

Iain Douglas,
On Behalf of the Forestry Appeals Committee