



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

**Subject:** Appeal FAC 054/2022 regarding CN86043

Dear

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. 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 CN86043.

**THE LICENCE.**

Licence CN86043 is for 7.68 Ha. of afforestation in the townland of Ballygrany, Co. Galway.

The application for the licence was submitted to the DAFM on the 28<sup>th</sup> of February 2020. A decision approving the licence was issued on the 11<sup>th</sup> of May 2022 with conditions including compliance with DAFM Technical Standards, Tree/Hedgerow retention, compliance with mitigation measures set out in the Appropriate Assessment Determination (AAD) & Ecology Report, and adherence to all scheme rules.

**FORESTRY APPEALS COMMITTEE.**

A hearing was held remotely at a sitting of the FAC held on the 29<sup>th</sup> of June 2023 which considered the appeal and the processing of the licence as it relates to the decision to issue the licence on the 11<sup>th</sup> of May 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 7.68 Ha. of afforestation in 5 Plots, Plot 1 is GPC 3 (Sitka spruce and Additional Broadleaves), Plots 2 is GPC 10 Native woodland Scheme (NWS Scenario 4), Plot 3 is GPC 3 (bio - unplanted), Plot 4 is GPC 10 NWS (Scenario 4) and Plot 5 is GPC 3 (Bio - unplanted). These Plot

numbering are those used on the applicant's revised biomap dated 13/08/2021 and the DAFM Site Plots-Pre-Approval report dated 11/05/2022, and the licence as issued.

The site is located in the townland of Ballygrany, Co. Galway, approximately 4 km west of the village of Ballymacward and 10 km north-east of the village of Monivea. The afforestation lies in two distinct and separate blocks. Plots 1,2 and 3 are accessed off local road L-3116 and are separated by a 20 m. powerline corridor from Plots 4 & 5 which are accessed off local road L-3407. Plot 3 fronts onto the public road opposite a number of dwellings and Plots 4 & 5 lie between two dwellings with Plot 5 fronting onto the public road.

The site description given is that the site soils are predominantly podzolic in nature. The slope across the site is predominantly flat to moderate (<15%). The vegetation on site is described as grass and rush. The site is crossed by/adjoins an aquatic zone(s).

The application documents before the FAC included a fencing map, in-situ photographs of the site notice, a revised & amended biodiversity/operational map dated 13/08/2021, a revised & amended species map dated 13/08/2021. 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 Galway County Council on the 13<sup>th</sup> of March 2020 from which no reply was received.

On the DAFM file there is an Inspector's Certification - Pre-approval Appropriate Assessment Screening Report dated the 9<sup>th</sup> of April 2021 which determines that the project should proceed to full AA in the case of two Natura 2000 sites; a DAFM Ecologist's Appropriate Assessment Screening Report (ASSD) and a DAFM Ecologist's Appropriate Assessment Report (AAR) and both dated 16<sup>th</sup> of March 2022, a DAFM Ecologist Report and a DAFM Ecologist's Appropriate Assessment Determination (AAD), both dated the 9<sup>th</sup> of May 2022; 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 11<sup>th</sup> of May 2022.

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

The proposed afforestation was subject to AA. The Inspector's Certification - Pre-approval Appropriate Assessment Screening Report dated the 9<sup>th</sup> of April 2021 identified six Natura 2000 sites within 15 km of the site; Curraghlahanagh Bog SAC IE0002350, Carrownagappul Bog SAC IE0001242, Shankill West Bog SAC IE0000326, Derrinlough (Cloonkeenleananode) Bog SAC IE0002197, Lough Corrib SAC IE0000297, Monivea Bog SAC IE0002352 and determined that Lough Corrib SAC and Monivea Bog SAC should proceed to Stage 2 AA. The DAFM Ecologist's ASSD of 16<sup>th</sup> of March 2022 determined that only Lough Corrib SAC should proceed to Stage 2 AA and reasons were recorded. The DAFM carried out an AAR (which included an In-combination Statement) on the impact of the proposal on Lough Corrib SAC on 16<sup>th</sup> of March 2022 and concluded that:

*"The project design, together with adherence to the relevant site-specific mitigation measures set out above, ensure that potential residual impacts do not arise and that the project itself (i.e. individually) will not prevent or obstruct the Qualifying Interests of the: Lough Corrib SAC IE0000297. from reaching or maintaining favourable conservation status..."*

the In-combination Statement concludes:

*“Therefore, it is deemed that this project, when considered in combination with other plans and projects, will not give rise to any adverse effect on the integrity of any European Site”.*

The DAFM concluded, in its AAD of the 9<sup>th</sup> of May 2022 that:

*“ the project proposed under CN86043, individually or in combination with other plans or projects, will not adversely affect the integrity of any of the aforementioned European Sites, having regard to their conservation objectives, provided the following mitigation is implemented:...”*

#### **Environmental Impact Assessment.**

The EU EIA Directive sets out, in Annex I, a list of projects for which EIA is mandatory. Annex II contains a list of projects for which member states must determine, through thresholds or on a case-by-case basis (or both), whether or not EIA is required. Afforestation is not referred to in Annex I. Annex II contains a class of project specified as “initial afforestation and deforestation for the purpose of conversion to another type of land use” (Class 1 (d) of Annex II). The Irish Regulations, in relation to forestry licence applications, require the compliance with the EIA process for applications relating to afforestation involving an area of more than 50 Hectares, the construction of a forest road of a length greater than 2000 metres and any afforestation or forest road below the specified parameters where the Minister considers such development would be likely to have significant effects on the environment.

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

#### **WFD**

The site lies in the Water Framework Directive (WFD) Catchment Corrib, and the Clare[Galway]\_SC\_050 Sub-catchment for which forestry not identified as a pressure in the sub-catchment.

The River Sub-Basin is the Glennamucka Stream\_010 and the nearest WFD River water body is the Glennamucka Stream\_010 some 1.1 Km southwest of Plot 4 which was of Moderate Status in period 2013-2018 and is Not at Risk as assessed by the EPA. The Groundwater body is the Clare-Corrib IE\_WE\_G\_0020 which was of Good status in the period 2013-2018 and is Not at Risk as assessed by the EPA.

The licence was subject of both a Desk and Field Inspection. The Field Inspection took place on the 14<sup>th</sup> of January 2022 and was inspected by a DAFM ecologist on the 15<sup>th</sup> of March 2022.

The file records that there were seven third-party submissions on the licence.

The Inspector’s Certification Report recommends approval of the licence subject to a number of conditions including (i) all existing trees and hedgerows within the site shall be retained, (ii) 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), (iii) adherence to all mitigation conditions as per attached Appropriate Assessment Determination and Ecology Report, dated 9/05/2022, and (iv) adherence to all scheme rules, Bio Plots must be fenced and protected as part of the plantation and NWS plots must adhere to species mixes as per relevant GPC requirements.

### **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. Impact on Residential Amenity i.e. loss of daylight, right to light.
2. Drainage, water is already flowing from the site.
3. There is woodland already planted in the area, there are several forested sites in the locality visible from the residence and the species planted does help the biodiversity of the area.
4. Timing of the application, it was submitted in March 2020 since when the global situation has changed regarding food security, and that land is needed for food production.
5. Impact on the Environment, no EIA was submitted and the presence of Corncrake in the area is reported.

### ***Post Appeal Correspondence***

The applicant made a submission, dated the 23<sup>rd</sup> of May 2023 responding to the hearing documents as circulated to the parties on 13<sup>th</sup> of April 2023. The appellant in turn made a submission in response, dated the 12<sup>th</sup> of June 2023; the applicant made a further submission in responding to the appellant's submission dated the 19<sup>th</sup> of June 2023. These submissions were circulated to the parties.

The DAFM made a late submission to the FAC dated the 28<sup>th</sup> of June 2023 responding to the appellant's submission of the 23<sup>rd</sup> of May 2022 this was not circulated to the parties and was disregarded by the FAC in the hearing of the appeal.

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

At its sitting on the 29<sup>th</sup> of June 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 SoF provided by the DAFM and all materials on the FLV. 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 5<sup>th</sup> of April 2023 confirms the administrative details of the licence application, indicates that the licence application was desk and field assessed and 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 an administrative comment on the grounds of appeal point 5 and states that *"All the appropriate environmental procedures were followed, and an Appropriate Assessment Report was drawn up and put on the Forestry Licence Viewer (FLV)."*

There is also a statement from the District Forestry Inspector (DI) dated the 8<sup>th</sup> of August 2022 and revised on the 8<sup>th</sup> of March 2023 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. The SoF concludes that *"Having reviewed this file and consulted with DAFM Forestry Management, I recommend that this licence be remitted to allow a referral to NPWS to take place."*

## **GROUND OF APPEAL.**

### **Impact on Residential Amenity.**

This ground of appeal contends that the proximity of the afforestation to the appellant's will result in reduced sunlight. The FAC noted that the Environmental Requirements for Afforestation and the Forestry Standards Manual 2015 (compliance with which is a requirement of the licence) specifies a minimum unplanted setback of forestry from a dwelling of 60m (or 30m with the approval of the owner of the dwelling) and that the proposal was revised by DAFM to include the planting of a 30m wide belt of broadleaved species adjacent to the unplanted 60m setback. The FAC noted that the site was inspected on the ground and response of the DI to this matter in the SoF.

The FAC noted that in the grounds of appeal the appellant stated that he wished to submit the findings of an Engineering Report dealing with daylight. Section 14B(1)(4) of the Agriculture Appeals Act, 2001 (as amended) requires an appellant to state all of the grounds upon which the appeal is made and provide to the FAC all of the documents and evidence upon which he or she intends to rely to support those grounds. The FAC noted that no engineering report to support this ground of appeal was submitted and the appellant has adduced no evidence to demonstrate that the proposal will impact on daylight to the dwelling. The FAC is not satisfied that an error was made on this matter.

### **Drainage.**

This ground of appeal contends that the site already has an excess of water and any spells of heavy or consistent rain causes water to overflow hazardously onto the road which subsequently flows into the driveways of houses in the area. The FAC noted that the site was inspected on the ground and response of the DI to this matter in the SoF, particularly the fact that the amendments to the proposal will create a natural attenuation area for drainage of the site and that there will no increased in the speed of runoff from the site, and that the Native Woodland measures should decrease runoff from the site over time, as trees and ground vegetation become established. The FAC further noted that mitigation measures in the AAD and the Ecology report with regard to the protection of watercourses and water quality.

The FAC noted that in the grounds of appeal the appellant stated that he wished to submit an Engineering Report showing the effects of drainage in the area. Section 14B(1)(4) of the Agriculture Appeals Act, 2001 (as amended) requires an appellant to state all of the grounds upon which the appeal is made and provide to the FAC all of the documents and evidence upon which he or she intends to rely to support those grounds. The FAC noted that no engineering report to support this ground of appeal was submitted and the appellant has adduced no evidence to demonstrate that the proposal will impact on drainage in the area. The FAC is not satisfied that an error was made on this matter.

### **Existing woodland in the area.**

This ground of appeal contends that there is already excessive afforestation in the area which affects biodiversity and an aerial photograph to support the ground is included. The FAC noted that cumulative effect of the proposal both in relation to the characterisation of the project and in terms of likely significant impacts is addressed in the Assessment to Determine EIA Requirement. The FAC further noted that while the DAFM "N/A" response to the question "*Based on the extent of forestry as outlined above, is the cumulative effect of this application likely to have a significant impact? If so tick yes and describe in the Inspectors comments box below.*" is stated to be a clerical error in the SoF and that the intended answer was "No", it is an error on the face of the record. The FAC in considering the DAFM response to the question "*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” is “Yes” noted that no explanation for the response is given and is of the view that this is an error on the face of the record.

The FAC also noted that in the Assessment to Determine EIA Requirement conducted by the DAFM the questions relating to Cumulative Effect refer only to forestry projects and do not consider other types of projects. As indicated above, a separate process was carried out for AA on European sites which include an in-combination assessment of other plans and projects (including, but not limited to, forestry projects). While the FAC would consider it reasonable that the record as a whole should be considered and that the reasons for not considering that the proposal is likely to have a significant effect on the environment might be found in separate documents, it would be clearer if an explicit reference to existing and approved projects was included.

**Timing of the afforestation.**

This ground of appeal contends that there was a time-lag of two years in making the decision and that in the meantime the situation with global food security has changed. The FAC noted the response of the DI to this matter in the SoF that the need for Stage 2 AA and AA Determination resulted in a longer time frame for a considered decision. The FAC is not satisfied that an error was made on this matter.

This ground of appeal also contends that in the light of global concerns about food security all available land in Ireland should be designated for cereal production. 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 matters of national agricultural policy fall within the remit of the FAC itself to determine.

**Impact on the Environment.**

This ground of appeal contends that it is not apparent that “Environmental Impact Study” was carried out and refers to the presence of the Corncrake. The decision before the FAC relates to the afforestation of 7.68 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. The FAC noted that the DAFM considered the project across a wide range of categories, including Archaeological, Land Use, Water, Protection of Fresh Water Peal Mussel, Landscape, Designated Habitats and Cumulative Effect and concluded that an EIA is not required.

This ground of appeal contends that the Corncrake, (*Crex crex*) an Annex 1 species protected under the Birds Directive is present in the area. The FAC noted that in the submissions on the licence application no mention was made of the presence or otherwise on this site of any particular species of bird. The FAC also noted that the site was inspected on the 15<sup>th</sup> of March 2022 by the DAFM ecologist and at the time of inspection no information was available to him that would have raised concerns over the possible impact of this afforestation project on the Corncrake.

The FAC noted that in the SoF the DAFM acknowledge that there was an error in the processing of the licence application in that no referral letter was issued to the NPWS and that the DI recommends that the licence be remitted to allow a referral to NPWS. In referring the licence to the NPWS the DAFM may

draw attention to the appellant's claim that Corncrake is present in the area. The Minister may refer an application to a public body and is required, in making a decision, to have regard to a submission made by such a body. It is clear from the DAFM statement provided that it was their intention to make a referral to the NPWS and the FAC is satisfied that the lack of referral constitutes a serious and significant error in the making of the decision and that the decision should be set aside and remitted.

As noted previously, the FAC considers that errors were made in the EIA screening as recorded related to the consideration of other plans and projects. The FAC also noted that the screening relied on adherence to a number of guideline documents that were not attached as conditions of the licence and appear to have been superseded by the Environmental Requirements for Afforestation. The FAC considers that a new screening for EIA should be undertaken with reasons for the screening conclusion recorded as required.

The FAC also considered the screening for Appropriate Assessment and the Appropriate Assessment undertaken. The FAC noted that the screening considered the potential for significant effects to arise on a European site and identified six sites within 15 km of the proposal. The proposal does not lie within the boundary of a European site. Each site was considered in turn along with its qualifying interest and conservation objectives. Significant effects were considered in relation to the proposal itself and in combination with other plans and projects, forestry and non-forestry, and reasons were provided for the screening conclusions. The screening concluded that the proposal should proceed to Appropriate Assessment (AA) in relation to one European Site, Lough Corrib SAC IE0000297, due to a hydrological connection with the site. The proposal lies 2.3km from the SAC. The FAC considers that this represented a precautionary approach. The AA records a detailed examination of the potential significant effects arising from the proposal in relation to each qualifying interest and the related mitigation measures to be specified.

The Report and Determination conclude that,

*Therefore, it is deemed that this project, when considered in combination with other plans and projects, will not give rise to any adverse effect on the integrity of any European Site.*

The FAC was satisfied that the Appropriate Assessment undertaken by the Minister as recorded complied with the requirements of the Forestry Regulations 2017 and the EU Habitats Directive. However, as noted, the FAC is remitting the decision in order that the application be referred to the NPWS, as intended, and for the Minister to complete a new EIA screening. In completing the processing of the application and making a new decision the Minister must ensure that any new information that might arise that could affect the screening for Appropriate Assessment, or the Appropriate Assessment is considered and incorporated into that process as required.

### **Conclusion**

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal and the SoF submitted by the DAFM, and the post appeal submissions mentioned above. 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 CN86043.

The FAC is thus, setting aside the decision of the Minister and remitting it to require the DAFM to refer the application to the NPWS as intended and to undertake a new screening for Environmental Impact Assessment in line with the requirements of the Forestry Regulations 2017 and the EU EIA Directive before a new decision is made.

Yours sincerely,

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Iain Douglas,  
On Behalf of the Forestry Appeals Committee