



27th March 2023

Subject: Appeals FAC 129/2022 & FAC 130/2022 relating to Licence CN84879

Dear

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

DECISION.

Having regard to the evidence before it, including the Department of Agriculture, Food and the Marine (DAFM) record of the decision, the notice and grounds of appeal and the Statements of Fact (SoF) provided by the DAFM, all materials on file, and in particular the following considerations, the FAC has decided to set aside and remit the decision of the Minister regarding licence CN84879.

THE LICENCE.

Licence CN84879 is for 4.73 Ha. of afforestation GPC 3 the townland of Greaghrevagh More, Glebe, Co. Leitrim, and was submitted to the DAFM on the 19th of April 2022. A decision approving the licence was issued on the 29th of August 2022 with conditions including compliance with DAFM Technical Standards, retention of all trees/hedgerows on site, adherence to the ecology report mitigation measures, the planting of additional Broadleaves Hazel & Birch to the public road setback, 60m residential set back with 5 rows of native species from specified dwellings and compliance with conditions in the archaeology report.

FORESTRY APPEALS COMMITTEE.

A sitting of the FAC held on the 28th of February 2023 considered the appeal and the processing of the licence as it relates to the decision to issue the licence on the 29th of August 2022. The FAC members present were: Mr. John Evans (Chairperson) and Mr. Iain Douglas.

Secretary to the FAC: Mr. Michael Ryan.

In the interest of clarity and for the avoidance of doubt this sitting of the FAC considered appeal refs. FAC 129/2022 & FAC 130/2022 only in relation to the licence decision of 29th August 2022.

BACKGROUND.

Licence CN84879 has been the subject of two previous FAC hearings. An oral hearing was held on the 8th of January 2021 for appeals FAC 461/2019 & FAC 409/2019. The licence was set aside and remitted to the Minister on the 29th of January 2021 due to the fact that no "In-combination Assessment" was undertaken. A second hearing of the FAC was held on the 14th of September 2021 for appeal FAC 093/2021. The licence was set aside and remitted to the Minister on the 23rd of

November 2021 to carry out and record a new assessment to determine whether the application should be subject to the EIA process under the EU EIA Directive before a new decision is made.

Only those documents relevant to the appeal under consideration are referred to below. This includes a site notice dated 25th September 2019 and photographs of a site notice in place dated on DAFM Contacts as the 1st of October 2019 and 31st of October 2019 (text not legible in the photograph). The location of the site notice is marked on the mapping submitted.

The licence was not referred to any statutory body.

The Inspector's Certification (with a spatial run dated 29th August 2022) indicates that the soil type underlying the site is podzolic in nature, that the slope is predominantly flat to moderate (<15%) and that the site does not adjoin or contain an aquatic zone(s). The vegetation on site is described as grass and rush.

The Appropriate Assessment Screening in the Inspector's Certification considered one Natura 2000 site within 15km of the proposed afforestation and that there was no need to extend that distance in this case. The European site identified was the Cuilcagh-Aniern Uplands SAC (Site Code IE0000584) and was screened out because of *"Other factors, As per AA Screening Determination"*.

The DAFM Ecology Section carried out an Appropriate Assessment Screening & Determination (AASD) dated 22nd of August 2022 and assessed two Natura 2000 sites within 15km the proposed afforestation, Cuilcagh-Aniern Uplands SAC (Site Code IE0000584) and Cuilcagh Mountain SAC (Site Code UK0016603). Both sites were screened out due to the separation of the Natura 2000 sites from the proposed afforestation and the lack of sufficient pathways for effects to occur. The Appropriate Assessment Determination by DAFM was that the project would not have any significant effect, alone or in-combination with other plans and projects, on the European sites listed in the screening and that the proposed afforestation would not adversely affect the integrity of those sites.

The AASD included an In-combination Statement dated the 24th of June 2022 on the proposal's potential to impact on the two Natura 2000 sites in combination with other plans and projects. The In-combination Statement concludes that the proposed afforestation, when considered in combination with other plans and projects, will not give rise to the possibility of an effect on the Natura sites listed in the AA Screening.

The Inspector's Certification also contains an Assessment to Determine EIA Requirement which considered the proposed afforestation across a range of criteria and a determined that the proposal should not be subject to the Environmental Impact Assessment (EIA) process.

The proposed afforestation was Desk Assessed and Field Inspected following the licence application.

THE APPEALS.

There are two third-party appeals against the decision to approve this current licence application.

The grounds of appeal are summarised as follows:

FAC129/2022

- No site notice was in place.
- The proposal would impact on views even with 60m setback.
- The proposal would impact on daylight & residential amenity of the dwelling.
- The proposal would create the potential for forest fires.

- The proposal would impact on flora/fauna and mentions otter & badger.
- Other points (i) Option for Judicial Review re: site notice, (ii) the licence should be remitted to the earlier consultation stage because of the lack of a site notice to enable a submission to be made or afforded time to get expert reports, (iii) An oral hearing. Is requested.

FAC 130/2022

1. There is a breach of Article 2(1) and Article 4 (3) of the EIA Directive 2014/52/EU.
2. There is non-compliance with Forestry Regulations 2017 (5)(2).
3. There is non-compliance with Forestry Regulations 2017 (11)(2)(b)
4. The two points of access to the site are not adequate to facilitate the extraction of commercial timber.
5. The proposal has not adequately assessed the potential impact on (i) habitats and species protected under Annexes I, II and (IV) of the Habitats Directive and Annex I of the Birds Directive.
6. The Appropriate Assessment screening is deficient.
7. There is no assessment of High Nature Value farmland (HNV).
8. There is no evidence that Areas for Biological Enhancement (ABE) selected are the best areas in accordance with Section 6.2 of the Forestry Procedures Manual.
9. There is a failure of DAFM to safeguard HNV is not consistent with Rural Development Regulations (1305/2013), their supporting regulations (807/2014) or the commitments made in the Forestry Programme 2014-2021.
10. The Determination of the Inspector in terms of the Requirement for an EIA is inadequately reasoned.
11. The licence approval is not consistent with the Water Framework Directive.
12. The Approval of the licence is not consistent with the requirements of Articles 5 and 9 of the Birds Directive.
13. Monitoring & Inspection by DAFM is not sufficiently robust to ensure that licence conditions will be complied with.
14. The DAFM has a conflict of interest under Article 9a of the EIA Directive.

The appellants requested an oral hearing.

CONSIDERATION BY THE FAC.

The FAC, at the sitting of the FAC on the 28th of February 2023, had before it the full DAFM record of the decision, the notice and grounds of appeal and the Statements of Fact (SoF) provided by the DAFM and all materials on file. Having regard to the particular circumstances of the appeal, the FAC considered that it was not necessary to conduct an oral hearing in order to properly and fairly determine the appeal.

DAFM STATEMENT OF FACT.

The Statements of Fact (SoF) provided by the DAFM for both appeals, dated the 14th of December 2022, confirm the administrative details of the licence application, and indicate that the licence application was desk assessed and that a field assessment was carried out on the 8th of November 2019. The SoF state that the DAFM was satisfied that all criteria in its standards and procedures were adhered to in making the decision on this licence application. The SoF include a statement dated the 7th of November 2022 from the Forestry Inspector confirming that the AA process was carried out using the procedures of November 2019, that the standard operating procedures were applied, and contain a response to the grounds set out in the appeal.

GROUNDINGS OF APPEAL

FAC129/2022

Site notice not in place.

In considering this ground of appeal the FAC noted that there is a copy of the site notice and photographs of the site notice in situ on the file and that the location of that site notice is clearly marked on the biomap submitted by the applicant dated the 24th of September 2019. The FAC noted that the appellant has not adduced any evidence as to what date the site notice was not in place during the five-week period specified in the Forestry Regulations. The FAC also noted that the DAFM inspected the site after the five-week period had expired and was thus required to enter N/A to the question on the presence of the site notice in the Inspection Details section of the Inspector's Certification. As a result of this, the FAC is not in a position to take a view on this matter, however it is evident from the fact that two appeals have been made with regard to this application that there had been a reasonable level of local awareness of the application. The FAC has no evidence to conclude an error has been made regarding this ground.

Impact on Daylight, Residential Amenity & Views.

In considering the grounds of appeal relating to the loss of daylight, Residential Amenity & Views to the dwelling, the FAC noted that the site was inspected on the ground and that publicly available aerial photography shows the dwelling surrounded by existing conifer trees on the three sides of the site away from the public road and that licence condition 5, requiring the conifer plantation to be setback of 60m plus 5 rows of broadleaved trees from the dwellinghouse, exceeds the standard dwelling set back of 60m as set out in the Forestry Standards Manual 2015. The FAC further noted that Slieve Aniern is located west of the dwelling and that there is planting on the south-west and north-west boundaries of the dwelling. The FAC is not satisfied that an error was made on this matter.

Potential for forest fires.

In considering the ground of appeal that there is potential for forest fires associated with the proposed planting, the FAC noted the requirements set out in the Environmental Requirements for Afforestation 2017 and the Forestry Standards Manual 2015 stating that planting shall not take place within 60m of any dwelling or 30m with the written consent of the owner and that Condition 5 of the licence mandates compliance with the Environmental Requirements for Afforestation and Forestry Standards Manual amongst others and that the 60m setback is further enhanced by the planting of five rows of broadleaved trees. The FAC also noted that the site was inspected on the ground and that the DAFM found that the site itself is currently in agricultural pasture and that the existing adjoining forestry is not contiguous to any extensive area of unenclosed land and is itself adjoining mainly agricultural land. It is acknowledged that forest fires by and large spread from adjoining lands into forest lands, therefore given the absence of significant areas of extensively managed lands containing flammable vegetation such as purple moor grass, furze and heather contiguous to the existing forestry and the fact that the current vegetation type and land management in the area is not conducive to the initiation or spread of fire, and the unplanted setbacks and conditions of the licence, the FAC did not consider that the proposal as specified would represent a significant risk of fire in the locality and was not satisfied that an error was made on this matter.

Impact on flora/fauna particularly otter & badger.

In considering this ground of appeal the FAC noted that both otter and badger are protected under the Wildlife Act 1976 (as amended) and that the appellant has adduced no evidence as to the presence of otter or badger in the area of the proposed afforestation. The DAFM Ecologist, having

inspected the site found no evidence of otter or badger but on the precautionary principal specified mitigation measures for both in the ecology report, compliance with which is a condition of the licence. The FAC does not consider that the DAFM erred as it relates to this ground of appeal.

FAC 130/2022

EIA Directive.

In considering the ground of appeal which contends that there has been a breach of Article 2(1) and Article 4(3) of the EIA Directive 2014/52/EU, the FAC noted that the EU Environmental Impact Assessment (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. 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 or 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 decision under appeal relates to a licence for afforestation of 4.73Ha, so is sub threshold for mandatory EIA as set in Irish Regulations.

The FAC noted that Schedule 3 of the Forestry Regulations is a direct transposition of Annex III of the EIA Directive and that the DAFM considers that the range of criteria, including existing land use, cumulative effect and extent of project, designated and non-designated habitats, archaeology, and landscape considered in the Assessment to Determine EIA Requirement is sufficient to meet the requirement of Schedule 3 and enable it to determine whether the proposed afforestation should undergo EIA. The FAC further noted that having considered the licence application across that range of criteria the afforestation was not required to undergo the EIA process.

Assessment to Determine EIA Requirement.

In considering the ground of appeal that the Assessment to Determine EIA Requirement is inadequately reasoned the FAC noted that the DAFM carried out a new Assessment to Determine EIA Requirement with a spatial run dated the 29th of August 2022 in advance of making the decision to grant this licence, the Inspector recorded a consideration of the application across a range of criteria relevant to the proposed afforestation, including water, soil, terrain, slope, designated areas, landscape and cumulative effects. The FAC noted the response in the determination to the question "EIA: On the basis of this examination this application be subject to the EIA process" is "No" and that the criteria and the responses given in the Assessment for EIA Requirement determination, and other documents on the file, provide the rationale for the determination.

Cumulative Impact

In considering those grounds of appeal that more generally refer to the contention that the cumulative effect of felling and replanting in the area has not been adequately considered, although there is no specific evidence of this provided, 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 Questions 3-11 of the Assessment to Determine EIA Requirement. The FAC further noted that while the Minister recorded a separate characterisation of plans and projects in the area in the In-combination Report contained in the ASSRD of 22nd of August 2022 this is not explicitly cross-referenced in the EIA Determination, which itself only refers 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.

This ground of appeal also questions the DAFM criteria for cumulative impact. 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 noted that, with regard to question 12 in the *"Cumulative effect and extent of project"*, the % forest cover in the underlying waterbody (or waterbodies), the Inspector comments that *"It is noted that the proposed afforestation area is on the boundary of two river sub-basins Yellow (Ballinamore)_010 and Yellow (Ballinamore)_020 with plot 3 split between two sub basins, approximately 44% and 16% of each sub basin is under forest cover these figures were considered. Point 12 figure 23.76% taken as an indicative average of the two river sub basins for the application."*¹ In the light of this comment the FAC considers that the metrics referred to in this ground of appeal, the approximate % forest cover in the underlying waterbody (or waterbodies) and the approximate forest cover for each sub-basin given in the In-combination Statement are not directly comparable.

This ground of appeal also seeks an explanation as to the "No" response to the question *"Is the amount and type of forest cover in this locality known to be a significant issue?"* in the current application and "S/A" in the previous licence application. The FAC considers that this is a completely new assessment of the licence application and as such was required to be considered *de novo* by the DAFM without recourse to previous assessments.

The FAC does not consider that the DAFM erred as it relates to these grounds of appeal.

Access

The FAC, in considering the ground of appeal contending that the access is inadequate to facilitate the extraction of commercial timber, noted that this licence application is for afforestation only and that the operational details for the licence indicate that planting will be carried out by mounding and slit planting, operations normally carried out without the need for heavy machinery and that the public road onto which the proposed access is shown on the biomap does not form part of the Kingfisher Cycle Trail according to publicly available mapping which runs on another public road to the east from which Plots 332 & 313 are separated by a block of existing forestry.²

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

The FAC noted that the proposed afforestation is in two separate and distinct sections, a "stand-alone" plot, Plot 454, and located some 70m south-east and separated from Plot 454 by agricultural land and a public road are Plots 332 & 313. The FAC further noted that while the biomap indicates the location of the access point to onto the public road for Plots 332 & 313, the access point for Plot 454 is located in a field some 34m north-east of the public road, it is not apparent how or where the Plot 454 is accessed from the public road as required by Section 18.7 "Biodiversity Map" of the Forestry Standards Manual 2015. The FAC considers that the failure to ensure that the mapping conformed to the requirements of the Forestry Standards Manual 2015 regarding the identification

¹ This is the full text of the comment box as supplied to the FAC by DAFM

² <https://kingfishercycletrail.com/trail-route/ride-5/>

of vehicular and pedestrian access to the site represents an error in the processing of the application.

The FAC noted that the Assessment to Determine EIA Requirement refers to and relies on Guidelines in relation to Water Quality, Archaeology and Landscape however these Guidelines have not been attached as a condition of the licence. Furthermore, the Environmental Requirements for Afforestation, adherence with which is a condition, states that it replaces the existing Guidelines. The FAC considers that this creates unnecessary confusion and a lack of clarity in the processing of the decision.

Forestry Regulations 2017

In considering those grounds of appeal that Article (5)(2) of the Forestry Regulations 2017 has not been complied with as it relates to mapping and hedgerows, the FAC had regard for the SoF provided by DAFM. This states that the Information provided was appropriate and sufficient to facilitate the DAFM's assessment of the proposal and that the decision was issued in accordance with DAFM procedures, SI 191/2017 and the 2014 Forestry Act. The FAC also noted that the site was inspected in the field and that a condition of the licence is that all existing trees and hedgerows within the site shall be retained. The FAC further notes that the SoF states that all afforestation projects must be supervised and signed off by professional foresters who are capable of understanding these licence conditions. The FAC not satisfied that an error was made by DAFM in respect of these grounds in the appeal.

In considering the ground of appeal that Article (11)(2)(b) of the Forestry Regulations 2017 has not been complied with, the FAC noted that the appellant has not adduced any evidence as to what date the site notice was not in place during the five-week period specified in the Forestry Regulations. The FAC also noted that the DAFM inspected the after the five-week period had expired and was required to enter N/A to the question on the presence of the site notice in the Inspection Details section of the Inspector's Certification, therefore the FAC is not in a position to take a view on this matter, however it is evident from the fact that two appeals have made with regard to this application that there had been a reasonable level of local awareness of the application. The FAC has no evidence to conclude an error has been made regarding this ground.

The FAC noted that Article 11(1) of the Forestry Regulations 2017 requires the applicant to erect a site notice at the entrance from the public road to the land to which the application relates and that the biomap submitted on the 24th of September 2019 shows only the site notice at the entrance from the public road to Plots 332 & 313, the biomap does not show how Plot 454 is accessed from the public road or where the entrance from the public road is located. The FAC considers that the failure to indicate the entrance from the public road and access how Plot 454 is accessed from the public road on the biomap represents a serious error in the processing of the licence application.

Habitats & Birds Directives.

In considering the grounds of appeal which contend that the potential impact of the proposed afforestation on habitats protected under Annex I of the Habitats Directive, species protected under Annex II of the Habitats Directive, species protected under Annex IV of the Habitats Directive (with specific reference to the pipistrelle bat) and species protected under Annex I of the Birds Directive (with specific reference to Hen Harrier) have not been adequately assessed, that the application was not referred to the NPWS and is desk assessed only.

The FAC noted the response of the DAFM ecologist to the grounds of appeal dated the 12th of October 2022 which stated that the site was inspected on the 11th of August 2022 and an ecology report prepared on the 22nd of August 2022. The FAC noted that the DAFM ecologist found no Annex

1 habitats on the site and that otter is listed in both Annex II & Annex IV and that while there was no evidence of otter on the site, based on the precautionary principal, mitigation measures for otter were identified in the ecology report, compliance with which is a condition of the licence. The FAC further noted that the appellant has adduced no evidence as to the presence of bats or Hen Harrier on the site and that in the DAFM ecologist's response it is stated that retention of hedgerows as linear features would not adversely affect commuting bats and that the site is not in an Special Protection Area (SPA) designated under the Birds Directive nor is it in a High Likelihood Nesting Area for Hen Harrier.

The FAC noted that the site was inspected in the field on the 8th of November 2019 prior to the issuing of the original licence decision.

The FAC noted this ground of appeal contends that the licence should have been referred to the NPWS to ensure the assessment of the impact of the proposal on ecology was comprehensive. The FAC noted that the DAFM is the competent authority for issuing forestry licences and that referrals to statutory authorities and other bodies are a matter for the DAFM.

The FAC is not satisfied that the DAFM has erred regarding these grounds of appeal.

Appropriate Assessment.

In considering the ground of appeal which contends that the Inspector's Appropriate Assessment Screening is deficient, the FAC noted that a DAFM Ecologist carried out an Appropriate Assessment Screening Report & Determination (AASRD) dated 22nd of August 2022 and that this was referred to in the Inspector's Appropriate Assessment Screening.

The AASRD considers Cuilcagh Mountain SAC (Site Code UK0016603) and contains as Appendix 2 an In-combination Report and the name of the ecologist is given on the report, furthermore the FAC noted that question 3 of the Inspector's Appropriate Assessment Screening refers to the District Inspector, which the FAC considers sufficient identification. The FAC is not satisfied that the DAFM has erred regarding this ground of appeal.

In-combination Statement

The FAC noted that the conclusion of the AA In-combination Statement in the AASRD states.

"It is concluded that there is no likelihood of the proposed afforestation project CN84879 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 would understand 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 screening 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.

The FAC considers this to be an error as the conclusion does not appear to consider effects that might arise from the proposal itself which are not significant themselves but which in-combination with other plans and projects might result in a significant effect. The FAC therefore considers that this screening should be undertaken again to consider whether the project in-combination with other plans and projects has the potential to result in a significant effect on a European site.

High Nature Value Farmland (HNV).

In considering the ground of appeal that there has been no assessment of High Nature Value Farmland (HNV), the FAC noted that both the appellant in the grounds of appeal and the DAFM in the SoF reference the paper "Predicted distribution of High Nature Value farmland in the Republic of Ireland (S. Matin et al, 2016). HNV farmland, according to this paper is 'typically characterised by low-intensity farming associated with high biodiversity and species of conservation concern'. It is clear from the record that a DAFM inspector did visit the site and did record its characteristics, which did not accord with this definition. No evidence was adduced to the contrary and the FAC is not satisfied that the DAFM evaluation of this site contained a serious error.

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 in accordance with Section 6.2 of the Forestry Procedures Manual, the FAC noted the ABE referred to on the biomaps consist of setbacks for public roads, hedgerows and dwellings and that use of these setbacks as ABE complies with the DAFM Environmental Requirements for Afforestation 2016. The FAC noted additional setbacks are 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.

DAFM policy to protect the environment & biodiversity.

In considering the ground of appeal which contends that the failure of DAFM to safeguard HNV is not consistent with Rural Development Regulations (1305/2013), their supporting regulations (807/2014) or the commitments made in the Forestry Programme 2014-2021. The FAC noted that the DAFM had carried out an Assessment to Determine EIA Requirement which assessed the application across a range of criteria, including water, soil, terrain, slope, designated areas, archaeology, landscape, and cumulative effects, and determined that the project was not required to undergo the EIA process. The FAC also noted that the licence contains a requirement that the afforestation is carried out in accordance with the DAFM Environmental Requirements for Afforestation and the Forest Standards Manual and that the DAFM uses detailed ecological and species-specific guidance when assessing an application for afforestation. The FAC is not satisfied that the DAFM has erred regarding this ground of appeal.

Water Framework Directive.

In considering the grounds of appeal that the licence approval is not consistent with the Water Framework Directive, the FAC noted that River Sub-Basins (RSBs) are not allocated a water quality status by the EPA and that the Hyland judgement deals solely with surface waters. The FAC further noted that the only surface waters in proximity to the site are two EPA River Waterbodies; the Yellow (Ballinamore)_010 [Code IE_NWE_36Y010200] and the Yellow (Ballinamore)_020 [Code IE_NWE_36Y010400] both of which are allocated moderate status by the EPA and that the status of those river waterbodies are not at risk. The FAC noted that drainage of the site is not required. The FAC is not satisfied that the DAFM has erred regarding this ground of appeal.

Birds Directive

In considering the grounds of appeal that the licence approval is not consistent with the requirements of Articles 5 and 9 of the Birds Directive, the FAC noted that the granting of the afforestation licence does not exempt the holder from meeting any legal requirements set out in any other statute. The FAC is not satisfied that the DAFM has erred regarding this ground of appeal.

Monitoring & Inspection by DAFM.

In considering the ground of appeal that the monitoring & inspection by DAFM is not sufficiently robust to ensure that licence any conditions will be complied with. The FAC considers that the monitoring & inspection of licences is a matter for the DAFM and outside the remit of the FAC.

DAFM conflict of interest under Article 9a of the EIA Directive.

In considering the ground of appeal that the DAFM has a conflict of interest under Article 9a of the EIA Directive, the FAC noted that the DAFM is the competent authority for EIA for forestry licencing and under that Article of the Habitats Directive is required to perform its duties in an objective manner and should not find itself in a situation giving rise to a conflict of interest. The role of the FAC, as set out in the Agriculture Appeals Act 2001 (as amended), 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 considers that the matter raised in this ground of appeal is outside the remit of the FAC.

Conclusion

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal and the Statements of Fact 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 CN84879. The FAC is thus, setting aside the decision of the Minister and remitting it to request from the Applicant a revised biomap indicating showing how Plot 454 is accessed from the public road and publication of the required site notice at that entrance and for the Minister to undertake a new Appropriate Assessment Screening to consider whether the project in-combination with other plans and projects has the potential to result in a significant effect on a European site in accordance with Article 6(3) of the EU Habitats Directive before a new decision is made.

Yours sincerely,

Iain Douglas,
On Behalf of the Forestry Appeals Committee