



11th May 2023.

Subject: Appeal FAC 068/2022 regarding CN88483

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 (DAFM). The FAC established in accordance with Section 14 A (1) of the Agriculture Appeals Act 2001, as amended ("the Act"), has now completed an examination of the facts and evidence provided by the parties to the appeal.

Hearing

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. A hearing of appeal FAC 068/2022 was held remotely by the FAC on 28th February 2023.

In attendance

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

Secretary to the FAC: Mr Michael Ryan

Decision

Having regard to the evidence before it, including the record of the decision by the DAFM, the notice of appeal, the Statement of Fact (SoF) provided by the DAFM, and all other submissions received, and, in particular, the following considerations, the FAC has decided to set aside and remit the decision of the Minister regarding licence CN88483.

Background

An afforestation licence for 16.69ha in 5 plots at Breanross North, Aghamore, Co. Leitrim was issued by the DAFM on 13/06/2022. The licence also provides for fencing of 2,818.87m in length. Two of the plots are to be unplanted bio-plots. The remaining three plots are to be an integrated mix of Pendunculate Oak (PO) and Beech (BE). The materials on file indicate that the site is comprised of plots to the east of Lough Sallagh and Errew Lake located on either side of the L1599 road between Mohill and Gortletteragh.

Documentation on file (in particular the Appropriate Assessment Screening Report bearing a date 13/06/2022) describes the predominant soil type underlining the project area as predominantly podzolic in nature, the slope to be predominantly flat to moderate (<15%), and that the project area is crossed by / adjoins an aquatic zone(s). Vegetation type(s) within the project area are stated to comprise

Grass/rush. An In-combination statement on file states that the site is within the River Sub-Basin's Drumbad_010 and Rinn_020, approximately 12% and 11% of which are under forest cover. The FAC noted that publicly available data provided by the EPA indicate that both the Rinn_020 and Drumbad_010 river waterbodies have a moderate status under the most recent Water Framework Directive (WFD) monitoring cycle.

Application documentation submitted includes: pre-approval submission data presented in an INET pre-approval submission report (undated, loaded to FLV 18/05/2022) showing an initial application area of 24.11ha and indicating herbicide control in years one, two, and three; a site notice dated 12/05/2021 with application area 24.11ha and photograph of site notice in-situ; two fencing maps for different parts of the site also indicating location of power lines crossing the site and dated 16/03/2021, and showing deer and rabbit fencing; a location map showing the site and the route to be used for its access on public roads; and two biodiversity/operational maps dated 16/01/2021 for different portions of the site. These biodiversity/operational maps show setbacks for hedgerows, public roads, and rivers; direction of mound drains; location of silt traps; location of site notice; and location of site compound/fuel storage.

A Request for Supporting Documentation issued by DAFM (on file dated 21/10/2021), requesting revised maps and indicating that certain areas should be excluded and that other areas should be for biodiversity enhancement. The applicant provided revised fencing, species and biodiversity maps all dated 13/12/2021, and indicating a revised project area of 16.7 ha.

On file is an undated email from a Consultant Ecologist to a representative of the applicant, uploaded to the FLV on the 16/01/2023. This states that an Annex I grassland survey was carried out at the project site and that no such habitats were recorded.

Submissions and referrals.

There was one third party submission arising from the application for the licence, which refers to potential negative social impacts of forestry and requirements on a licensing authority arising from the EIA directive, the Habitats Directive and the Birds Directive.

Three referrals were made on the 11/06/2021 which are on file, as are the responses as summarised below.

The application was referred to An Taisce. A response was received on 05/07/2021. In summary, this raised concerns regarding the cumulative impacts of afforestation, noting that the application represented the *fourth application that had been proposed for afforestation in this area in 2021*. The response also expressed concerns regarding the site supporting habitats and/or species which would qualify the project area as High Nature Value (HNV) farmland, and requested an ecological assessment to ensure afforestation did not take place in contravention of EU Reg 807/2014.

The report was also referred to the National Parks and Wildlife Service (NPWS) of the Department of Housing, Local Government and Heritage and a response was received on 04/08/2021. In summary this referred to a site inspection having been carried out by NPWS in which two plots comprised Annex I lowland hay meadows and traditional species rich unimproved pasture and noted other species in those plots. Significant portions of the hedgerow boundary in these plots were observed to be historic

townland boundaries with historic linear woodland. Historic features on the site were observed to host diverse species, and concerns were expressed in relation to double ditch features and potential for damage/destruction from machinery operations. The project boundaries were noted to not follow existing ditch lines in certain plots. One plot was observed to consist of biodiverse reed beds and to form the boundary of the Lough Sallagh pNHA and to be near historic winter foraging grounds for Whooper swans. Concerns were expressed about the impact of Deer Fencing on a historic long established treeline boundary on the site. Some features of Old Woodland were noted and as were concerns in relation to Cumulative Impacts and proximity to HNV lands.

The final referral was made to Leitrim County Council on 11/06/2021 with a reply received on 12/07/2021 (with South Leitrim Planning report dated 02/07/2021). In summary it observes that lands within some of the plots are within High Visual Amenity areas as identified in the Leitrim County Council County Development Plan 2015-2021, while the remainder is a High-Capacity Area for afforestation. The response objected to a number of plots and noted the presence of a pNHA in the vicinity of the project site.

Two reports from a DAFM Archaeologist are also on file. The initial report is dated 18/01/2021 which notes several archaeological features. A revised report, noting further archaeological features was received on the 28/09/2021

DAFM Assessment

The application was subject to desk and field assessment, with the field assessment having taken place on the 19/10/2021, per the Statement of Fact (SoF) provided by DAFM.

As noted above the DAFM wrote to the applicant by way of a Request for Supporting Documentation on the 21/10/2021. The revised maps received dated the 13/11/2021 excluded certain areas from the original proposal. The FAC note that this had the effect of removing two plots (plots 1 and 4 of the original proposal) objected to by Leitrim County Council on the basis of their being located in an area of High Visual Amenity as identified by the Leitrim County Development Plan 2015-2021. The third plot (plot 3 of the original proposal) objected to by the County Council for the same reason, which is the southernmost plot, remains in the proposal. Similarly, the revised maps removed plots which were the subject of some of the concerns expressed by NPWS (also plots 1 and 4 of the original proposal). In addition, two of the remaining plots (plots 2 and 5 in the original proposal), which were the subject of concerns expressed by NPWS are now each split into two plots to include a biodiversity plot each. Plans for the use of rabbit/deer fencing, which was a subject of concern in the NPWS response, are retained.

An Appropriate Assessment Screening Report is on file bearing a date of 13/06/2022. This records the presence of three European sites within 15km of the project site, namely: Ballykenny-Fishertown Bog SPA [4101], Clooneen Bog SAC [2348], and Lough Forbes Complex SAC [1818]. No other sites were included for assessment. All three sites are screened out on the basis of "Other factors, distance", and with reference to an in-combination statement. A document entitled "Appropriate Assessment Screening Report and Determination – Appendix A: In-combination report for afforestation project CN88483" is on file. This makes reference to planning systems and datasets being consulted on the 08/06/2022 in the "general vicinity of the project area in the River Sub-Basin's [sic] Drumbas_010 and

Rinn_020". Searches of planning systems are recorded relating to the DAFM Forest Service, An Bord Pleanála, the EPA and the local authority. Consideration is also given to the Leitrim County Development Plan 2015-2021. The in-combination statement, in its conclusion, states that:

"It is concluded that there is no likelihood of the proposed afforestation project CN88483 itself, i.e. 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".

An Assessment to Determine EIA Requirement is also on file bearing a date of 13/06/2022 and refers to a spatial run date of the 9/05/2022. In answer 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", the answer "No" is provided. In answer to the questions "Does this application, together with existing afforestation of 3 years or less within a 500 metre radius, constitute an area greater than 50 ha?" and "Does this application, together with other Form 1 applications within 500 metres and recommended for approval but not yet planted, constitute an area 50 ha or greater" an answer of "No" is provided, together with a value of 16.69.

The inspector certified the application on the 09/06/2022 and a record of this is on file, with the inspector's recommended conditions outlined. The licence issued on the 13/06/2022 in the form of a letter entitled "Afforestation Licence and Technical Approval under Afforestation Scheme". The licence included a number of conditions including adherence to various standards; setbacks from watercourses, archaeological features, roads, and veteran oak; the retention of existing hedgerows; notification to the DAFM on commencement of works; and consultation with Leitrim County Council.

Appeal and Statement of Fact

There is one third-party appeal against the decision to approve the licence. The full grounds of appeal were considered in full by the FAC and are to be found on file. The DAFM provided the FAC with a SoF which addressed each of the grounds. The SoF was considered in full by the FAC and is to be found on file. For ease of reference each of the grounds and the relevant response provided in the SoF are summarised below. The DAFM, in their SoF, requested an in person oral hearing.

1. That there was a lack of due process in the processing of the decision arising from the licence being issued on the 13th of June but this not being made know to the public until the 15th of June.

DAFM SoF: *That the licence was advertised on the next "advertising day" as was the Department's practice, that in any event the licence was available online as soon as the decision was made public, and that members of the public who had made a submission were made aware on the day of the decision, including the appellant.*

2. That licence condition 2 cannot be understood by the layperson.

DAFM SoF: *That the licencing conditions are well presented, are clear and well-reasoned and follow standard operating procedures.*

3. That 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.

DAFM SoF: That the condition is clear that all existing trees are to be retained and that there is no need or benefit in aggregating the data as described by the appellant.

4. That there is an error in the original application by reason of a Right of Way not being recorded in the project documentation as required under Article 5(2) of the Forestry Regulations.

DAFM SoF: That the right of way exists entirely outside the licence area.

5. That there was a revision of the project without opportunity for public participation, in particular with regard to the reduction of the project area from 24.11ha to 16.69 ha.

DAFM SoF: That changes made arose from field inspections and input from referral bodies, that species composition remained the same.

6. That the concerns of referral bodies have not been adequately addressed.

DAFM SoF: That the use of "plot" numbers by Leitrim County Council (as opposed to plot numbers in the application) does not invalidate consideration of the application by the Minister. That the submissions from public bodies resulted in the exclusion of certain areas from the licenced area. That the site was field assessed, and issues raised by referral bodies were considered as part of that inspection. That an ecological survey was carried out on behalf of the applicant, and this found no Annex one grasslands as posited by a referral body. That the licence requires the retention of features such as veteran oak and hedgerows to preserve habitats.

7. That the requirements of Article 12 of the Habitats Directive have not been adhered to.

DAFM SoF: That the site was inspected by a Forestry Inspector, and also an ecological assessment was carried out by a qualified ecologist, with no evidence of an Annex IV species observed.

8. That the details of woody weed removal have not been adequately described.

DAFM SoF: That woody weed removal in a standard operation in afforestation sites, that areas of gorse and briar identified in a statutory submission are largely contained in a bio plot and in the exclusion zone for power cables, and that all hedgerows and existing trees are to be retained as a licence condition.

9. That the EIA screening carried out inadequately considers cumulative and landscape impact and is inadequately reasoned.

DAFM SoF: That the quoted licence application, CN87028, is over 500m from the project site, and has not been approved or recommended for approval. That cumulative impact is assessed in in-combination reports and are available to the inspector. That in relation to Q11 on the EIA screening, there were no objections (or appeals) from anyone living in the vicinity of this site. That in relation to Landscape impact, the licence is for a

native tree in a lowland setting, and that the DAFM is the competent authority for the issuing of licences.

10. That the project is in a priority area for action under the Water Framework Directive, and that this has not been considered.

DAFM SoF: That specific conditions relating to the protection of water quality are included in the licence. That the method for determining the status of a Water Body are a matter for the EPA.

11. That the status of water bodies in the vicinity of the project site have not been adequately considered or are based on unsuitable assignment methods.

DAFM SoF: That the method for determining the status of a Water Body are a matter for the EPA.

10. That the project does not adhere to Government policy.

DAFM SoF: That the licenced area was field assessed both by a forestry inspector and a professional ecologist commissioned by the applicant. That the proposed licence area was amended on foot of submissions received and evidence presented. An ecological assessment was carried out by a qualified ecologist regarding grassland habitats within the licence area no annex IV habitats are present within the licence area. That submissions were received considered and acted on accordingly. That the project area is for GPC 6 native oak.

Consideration by the FAC

In the first instance the FAC considered whether an Oral Hearing was required noting the request for such a hearing in the SoF submitted by the DAFM. The FAC considered that it had sufficient information before it, and that it was not necessary to conduct an oral hearing in order to properly and fairly determine the appeal.

The FAC considered the submission in the grounds of appeal that there was a lack of due process arising from the date of advertisement of the decision. The FAC noted the submission from the DAFM in its SoF that the licence was advertised on the next "advertising day" as was the Department's practice, that in any event the licence was available online as soon as the decision was made public, and that members of the public who had made a submission were made aware on the day of the decision, including the appellant. The FAC noted that the application documents had been made available on the FLV for a number of months before the decision was made and that the application was subject to public consultation. The FAC does not consider that the fact that the licence was published on the DAFM website two days after its issue could be considered a significant error particularly in the context of the application documentation having been available for a number of months prior to the decision being made, that the application was subject to public consultation, and that the appellant was notified of the decision on the date of its being made.

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

several references to the inclusion of conditions in a licence. Section 7 of the Act provides for the Minister to grant a licence, to revoke a licence for reasons that may include non-compliance with any conditions, that where the applicant is not the owner that the conditions are binding on the owner. The condition that is referred to in the grounds of appeal relate to standards of good practice that are published and available on the DAFM website. On this basis the FAC is satisfied that conditions attaching to a licence are for the purposes of ensuring compliance on the part of an applicant or owner of lands on which a licence is granted, and that a basic understanding of forestry operations, including those relevant standards and circulars that may be in effect, can reasonably be assumed. The FAC is not satisfied that an error was made in the granting of the licence in relation to this ground of appeal.

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

A ground of appeal submits that there is an error in the original application by reason of a Right of Way not being recorded in the project documentation as required under Article 5(2) of the Forestry Regulations. The DAFM in its SoF submits that the right of way exists entirely outside the licence area. The FAC noted that on file is an Ordnance Survey Ireland location map provided by the applicant showing amongst other things the proposed access route to the site. The FAC notes that various tracks and roads are visible on this map relevant to the vicinity of the application. The FAC is not satisfied that an error was made in the granting of the licence in relation to this ground of appeal.

It is submitted in the grounds of appeal that there was a revision of the project without opportunity for public participation, in particular with regard to the reduction of the project area from 24.11ha to 16.69 ha. The FAC noted that there was a submission made by a member of the public, and that while making reference to issues of policy, process and potential conditions, the submission made no specific suggestions with respect to the scale, nature and composition of the proposed project. The FAC further noted that referrals were made to three referral bodies, and the submission in the SoF provided by DAFM that changes were made arising from responses received from those referral bodies and field inspections carried out by a Forestry Inspector. Those changes are contained entirely within the footprint of the original project, and no changes have been made with respect to the proposed species composition. The FAC is satisfied that the reduced scope of the licenced project compared to the original project proposal is as a proper result of the consultation process. The FAC is not satisfied that an error was made in the granting of the licence in relation to this ground of appeal.

The appellant submits in the grounds of appeal that the concerns of referral bodies have not been adequately addressed. Further to the ground of appeal noted immediately above, the FAC note the

reduction in scale of the licenced project on foot of the responses received from three referral bodies. The total area licenced is reduced to 16.69ha from an area applied for of 24.11ha. Various conditions are attached to the licence that address issues raised by the referral bodies including, but not limited to, the retention of existing hedgerows and trees. The FAC note the submission from DAFM in its SoF that the site was field assessed, and issues raised by the referral bodies were considered by the assessment. On the basis of the foregoing, the FAC is satisfied that the responses to referrals made were considered by the DAFM, and informed the Minister's decision.

As part of this ground of appeal, the appellant submits that the use of plot numbers by Leitrim County Council means it is not apparent whether these plots are included in the approval. The DAFM submit that this does not invalidate consideration of the application by the Minister. The FAC further note that the reference to these plots is in the context of their presence in an area High Visual Amenity as defined in the Leitrim County Development Plan 2015-2011. On this basis, by reference to the County Development Plan, it is apparent that the plots in question refer to plots 1, 3 and 4 in the original proposal. It is also apparent from the revised maps dated 13/12/2021 that plots 1 and 4 in the original proposal were subsequently omitted from the revised proposal. On this basis the FAC consider that it is possible to conclude that plot 3 in the original proposal (renumbered as plot 5 in the revised proposal) was included in the licenced area.

The appellant also submits as part of this ground that there is no evidence of an Ecological Assessment as proposed by An Taisce. The SoF from the DAFM submits that an ecological survey was carried out on behalf of the applicant, and this found no Annex one grasslands as posited by a referral body. The FAC note that a letter confirming that such a survey took place, and that no such habitat was observed, is undated but was uploaded to the FLV on the 16/01/2023 following the issue of the licence. It is therefore not apparent to the FAC that the Inspector was in possession of this survey at the time of certification. However the FAC note that An Taisce, in their response of 05/07/2021, raise the requirement for such a survey in the context of High Nature Value farmland and with reference to EU Regulation No 807/2014 (supplementing EU Regulation 1305/2013) on support for rural development by the European Agricultural Fund for Rural Development. EU Regulation. These regulations were repealed by EU Regulation 2021/2115 which governs the rules that apply to Union support financed by the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development. The FAC, as established under The Act, has no role in relation to the administration of grant-aid schemes and is confined to matters relating to the issuing of a licence.

Based on the above, the FAC is not satisfied that an error was made in the granting of the licence in relation to the ground of appeal that the concerns of referral bodies have not been adequately addressed, while noting that shortcomings did arise in relation to Assessment for EIA Requirement as noted elsewhere in this letter.

In relation to the ground of appeal that the requirements of Article 12 of the Habitats Directive have not been adhered to, the DAFM in its SoF submits that the site was inspected by a Forestry Inspector, and an ecological assessment was carried out by a qualified ecologist, with no evidence of any Annex IV species

observed. The FAC notes that the correspondence on file relating to a survey of the site is undated and is in reference to an Annex I grassland survey. However, the FAC considers that the granting of a forestry licence does not relieve the recipient of their responsibilities under the Wildlife Acts to obtain a derogation licence where works undertaken may result in the deterioration or destruction of breeding sites or resting places of Annex IV species, even where such destruction is not deliberate. The FAC is not satisfied that an error was made in granting of the licence in relation to this ground of appeal.

The appellant submits in the grounds of appeal that the details of woody weed removal have not been adequately described, and in so doing references the description of the site by the NPWS on foot of a site inspection. In considering this, the FAC had regard for the DAFM SoF. This states that woody weed removal in a standard operation in afforestation sites, that an area of gorse and briar identified in a statutory submission are largely contained in a bio plot and in the exclusion zone for power cables, and that all hedgerows and existing trees are to be retained as a licence condition. The FAC understands the terms scrub and woody weeds to be commonly employed on forestry and land management practices generally in Ireland to describe different plants, with scrub typically referring to low growing tree species such as willow and hazel, while woody weeds might describe non-tree plants such as the gorse and briar referred to in the SoF. The FAC also had regard for the fact that the terminology is used by both the forester who prepared the application and the Inspector who carried out a site inspection of the 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.

With respect to the grounds of appeal relating to the Water Framework Directive. The FAC had regard to the SoF provided by the DAFM. This states that that specific conditions relating to the protection of water quality are included in the licence, and that the method for determining the status of a Water Body are a matter for the EPA. The FAC reviewed the licence and noted that conditions include adherence to the Environmental Requirements for Afforestation and the Forestry Standards Manual (both of which contain requirements in relation to the protection of water quality), a setback from a watercourse on the boundary of plots 1,2, and 3. It also observed that the submission from NPWS had made specific reference to water features in relation to a proposed plot and that his plot had been omitted from the final licence area. The FAC noted that the EPA has classified the Rinn_020 and Drumbad_010 water bodies. The FAC is not satisfied that an error was made in the granting of the licence in relation to these grounds of appeal.

In relation to the ground of appeal relating to whether the project adheres to Government policy, the FAC considers that these are not matters that fall within its remit under the Act.

The FAC considered the ground of appeal that the Assessment to Determine EIA Requirement inadequately considers cumulative and landscape impact and is inadequately reasoned. In so doing, the FAC had regard to the SoF provided by DAFM. The decision before the FAC relates to the afforestation of 16.69ha which is substantially below the 50ha 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 should 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.

In the SoF, DAFM submits that in relation to Q11 (which the FAC takes to relate 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”*), there were no objections (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. The FAC further notes that two statutory consultees, the NPWS and An Taisce, in their responses on the 04/08/2021 and 05/08/2021 respectively, both specifically raises concerns in relation to cumulative impact in the area. In these circumstances the FAC formed the view that the decision to answer “No” to the question could reasonably be expected to require elaboration, and that none was provided in the comment box provided.

Also, in the SoF, the DAFM submit that the licence application quoted by the appellant, CN87028, is over 500m from the project site, and has not been approved or recommended for approval. Neither the appellant nor the DAFM provide details as to the precise location of CN87028 and its distance from the project site, and it is not visible on the FLV. However, in viewing the FLV, the FAC note that another licence application, CN88460, is for 20.83ha, and a portion of that site immediately abuts the project site under appeal. That site was approved on the 02/01/2022, the application having been received on the 10/03/2021, that is before the determination of the licence under appeal on the 13/06/2022. The Assessment to Determine EIA Requirement, with a spatial run of the 09/06/2022, contains a “No” response in answer to the questions *“Does this application, together with existing afforestation of 3 years or less within a 500 metre radius, constitute an area greater than 50 ha?”* and *“Does this application, together with other Form 1 applications within 500 metres and recommended for approval but not yet planted, constitute an area 50 ha or greater?”*. In both cases the “No” response is accompanied by the figure 16.69, which the FAC takes to be the cumulative figure for the categories of project described in each question. As this is the same as the application area, the FAC take the view that this has not included other applications such as CN88460, and therefore cannot be relied upon.

Based on the foregoing, including the apparent unreliability of the figures for cumulative afforestation and the absence of an elaboration in respect of the question relating to concerns regarding the amount and type of forest cover in the locality, the FAC concluded an error had been made in the Assessment to Determine EIA in respect of Cumulative effect.

In reviewing this ground of appeal, the FAC also noted that questions that relate to Cumulative effect only related to forestry projects and do not consider other types of projects. The FAC note that a separate process was carried out for Appropriate Assessment on European sites which include an in-

combination assessment of other plans and projects (including, but not limited to, forestry projects) which took place on the 08/06/2022, before the recorded spatial run date of the Assessment for EIA requirement of 09/06/2022. 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 Appropriate Assessment in-combination report.

On the question of whether an error had been made in the Assessment for EIA requirement in respect to Landscape Impact, the FAC had regard for and accepted the submission in the SoF from the DAFM that the licence is for a native tree in a lowland setting, and that the DAFM is the competent authority for the issuing of afforestation licences.

In addressing the grounds of appeal, the FAC considered also the requirements of the Habitats Directive, the completeness of the assessment of the licence application, whether there was an adequate assessment of cumulative effects and an examination of the procedures applied which led to the decision to grant the licence.

An Appropriate Assessment of the project is required by the EU Habitats Directive. This Directive requires that any plan or project not directly connected with or necessary to the management of a European site but likely to have a significant effect on it, either individually or in combination with other plans or projects, must be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. Furthermore, the competent authority can only agree to the plan or project after having ascertained that it will not adversely affect the integrity of the site concerned. Part 8 of the Forestry Regulations 2017 require the Minister to screen and where if so indicated to undertake an Appropriate Assessment in relation to specific applications. The FAC examined the record and statement from the DAFM and the information as uploaded to the FLV to inform the general public as to the content of the application including that relating to Appropriate Assessment.

As noted above, an Appropriate Assessment Screening report is on file bearing a date of 13/06/2022, which considers three European sites all of which are screened out of requirement for further Appropriate Assessment. In screening out each site, the report makes reference to an attached in-combination assessment. As also noted above, a document entitled "Appropriate Assessment Screening Report and Determination – Appendix A: In-combination report for afforestation project CN88483" is on file. In its closing section 2, entitled "In-combination Statement, it states that:

It is concluded that there is no likelihood of the proposed afforestation project CN88483 itself, i.e. 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 the project, either individually or in-combination with other plans or projects, is likely to have a significant effect on a European site and in the Appropriate Assessment of the implications of the project and such effects on the European site, having regard to the conservation

objectives of the site concerned. As stated on the record, it appears to the FAC that the potential for significant effects to arise from the proposal in-combination with other plans and projects were not considered on the basis that these were precluded by reason of individual projects not having a significant effect. The FAC would consider that this is not in keeping with the requirements of the Forestry Regulations 2017 and Article 6(3) of the EU Habitats Directive.

The FAC considered this to be a significant error as it demonstrates that the DAFM did not consider effects that might arise from the project which were not significant in themselves but which in-combination with other plans and projects might result in a significant effect. Furthermore, it would appear that the use of mitigation such as project design may have been relied upon when determining whether to screen a site in or out for further assessment.

In considering the appeal in this case the FAC had regard to the record of the decision, the submitted grounds of appeal, and all submissions received. The FAC concluded that a serious or significant error or series of errors were made in the making of the decision in respect of licence CN88483. The FAC is therefore setting aside and remitting the decision regarding licence CN88483 to the Minister to carry out a new Assessment for EIA requirement and an Appropriate Assessment screening of the proposal itself and in combination with other plans or projects before a new decision is made.

Yours sincerely,

John Evans On Behalf of the Forestry Appeals Committee