



26th May 2023

Subject: Appeal FAC 121/2022 against licence decision CN85683

Dear [redacted],

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 Marine (MAFM). The FAC established in accordance with Section 14 A (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.

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 121/2022 was held remotely by the FAC on 14th March 2023. In attendance:

FAC Members: Mr. Seamus Neely (Chairperson), 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, the notice of appeal, and submissions received, the Forestry Appeals Committee (FAC) has decided to allow the appeal and set aside the decision of the MAFM to grant the licence CN85683. The reasons for this decision are set out hereunder.

Background

The licence decision under appeal pertains to the afforestation of 18.33 hectares at Lisgorman, Co. Leitrim. The application which was submitted on 17th January 2020 describes the land as enclosed agricultural land with a grass rush /sedge rush vegetation type, being moderately exposed, on a mineral peat soil and having an altitude between 80 and 90 meters. The application documentation describes the site as having a northwest aspect with access being described as adequate. The site is immediately adjacent to an SAC lying to the north of plot 4. There is an electricity line traversing the site and the nearest house is some 30m distant. The species map on file dated 14th June 2022 shows the proposed planting as Sitka spruce (12.4 ha) ADB (2.19 ha) and the balance as Bio. Also included in the application documentation is Biodiversity Mapping, a fencing map and operational details in the form of the applicant's pre-approval submission report.

The biodiversity map shows the public road, hedgerows, utilized building, watercourse, watercourse setback, and the location of the site notices. Plot numbers and boundaries are also shown on the maps. The proposal includes 2381 metres of stock (sheep) fencing. The application records that the ground preparation would include manual herbicide control in years 0 – 3 and that slit planting would be used. Fertilizer is to be applied described as zero in year 1, 350 Kg Granulated Rock Phosphate in year 2, 250 Kg Granulated Rock Phosphate in year 3. The application was not referred to any referral bodies. The record confirms that the proposal was field inspected (walkover) on 14th March 2022 and that a submission relating to the application was received on 28th February 2020.

An Appropriate Assessment Screening Determination (AASD) dated 20th June 2022 described as being for afforestation project CN85683, located at Lisgorman, Co. Leitrim is to be found on file. It records a submission from Save Leitrim CLG and another from the Department of Agriculture, Food and Marine (DAFM) Archaeology. This AASD examines ten sites of which three (Unshin River SAC 001898, Cummeen Strand, Drumcliff Bay (Sligo Bay) SAC 000627 Cummeen Strand SPA 004035) are beyond the 15km zone of influence. Five sites were screened out and five sites (Glenade Lough SAC 01919, Lough Gill SAC 001976, Sligo/Leitrim Uplands SPA 004187, Cummeen Strand, Drumcliff Bay (Sligo Bay) SAC 000627, and Cummeen Strand SPA 004035) were screened in for stage two Appropriate Assessment (AA). Two of the European Sites (Glenade Lough SAC 001919 and Sligo/Leitrim Uplands SPA 004187) were originally screened out on the recommendation of the District Inspector but were screened in following a verification by a consultant Ecologist on behalf of the DAFM.

The record shows an Appropriate Assessment Report (AAR) dated 20th June 2022 described as being for afforestation project CN85683, located at Lisgorman, Co. Leitrim. This report examined the five screened in sites and outlines the mitigation measures required. The record in the AAR includes other plans and projects considered in combination with the proposal. The In-combination report / statement which is recorded as having been completed on 17th June 2022 includes the following wording.

'It is concluded that there is no possibility that the proposed Afforestation project CN85683, with mitigation measures set out in Section 4, will itself, i.e. individually, giving rise to an adverse effect on the integrity of the following European Sites and their associated Qualifying Interests / Special Conservation Interests and Conservation Objectives:

- *Glenade Lough SAC 01919*
- *Lough Gill SAC 001976*
- *Sligo/Leitrim Uplands SPA 004187*
- *Cummeen Strand, Drumcliff Bay (Sligo Bay) SAC 000627*
- *Cummeen Strand SPA 004035*

Therefore, there is no potential for the proposed project to contribute to any cumulative adverse effect on the integrity of the above European Site(s), when considered in-combination with other plans and projects.

Furthermore, it is considered that the regulatory systems in place for the approval, operation (including any permitted emissions) and monitoring of the effects of these other plans and projects are such that they will ensure that they too do not give rise to any adverse effect on the integrity of these European Sites’.

An Appropriate Assessment Determination (AAD) for afforestation project CN85683, located at Lisgorman, Co. Leitrim and dated 15th August 2022 is on the record which in section 4 outlines mitigation measures (in relation to water setbacks; silt and nutrient controls; hedgerow and field boundaries; preparation, storage and use of potentially hazardous material, fertilizer use, herbicide application; control of invasive species; otter; peregrine falcon and other matters relating to monitoring of the work) and concludes that the basis for this AAD is as follows:

- *‘the project is located outside any European site,*
- *though adjoining Lough Gill SAC 001976 to the northern boundary. Mitigation measures will ensure there is no potential for impact to conservation objectives for any European site within the zone of influence connected by source-pathway receptor.*

Therefore, the Minister for Agriculture, Food & the Marine has determined, pursuant to Regulation 42(16) of the European Communities (Birds and Natural Habitats) Regulations 2011 (as amended) and Regulation 19(5) of the Forestry Regulations 2017 (as amended), based on objective information, that no reasonable scientific doubt remains as to the absence of any adverse effect on the integrity of any European site’.

The DAFM recorded a consideration as to whether the proposal should be subject to an EIA. In addition to the previously identified records, this records a consideration of the proposal across a range of criteria and included that the application should not be subject to the EIA process. The licence was issued on 19th August 2022 subject to conditions. These include a requirement to adhere to the AAD dated 15th August 2022 and the AAR dated 20th June 2022 as completed by Ecologist.

Post Appeal Correspondence

The FAC wrote to the DAFM on 16th March seeking further information as follows.

‘A hearing of appeal ref. 121/2022 was held on 14th March 2023. The grounds of appeal contend, inter alia, that the location of the site notice for CN85683 was not in accordance with the Forestry Regulations 2017 (S.I. 197 of 2017). The FAC notes that Regulation 11(1) of the Forestry Regulations requires that:

“Where an application involves—

(a) afforestation, or

(b) forest road works

the applicant shall, before the making of the application, erect a notice in a form determined by the Minister, at the entrance from the public road to the land to which the application relates or, where no entrance exists, at the point where it is proposed to create an entrance, so as to be easily visible and legible by persons using the public road, and shall not be obscured or concealed at any time.”

In order to facilitate the FAC's further consideration of this appeal, the FAC is seeking the following further information;

- *A confirmation whether the locations of the two site notices as shown on the Bio Map accompanying the application meet the requirements set out in the regulations to be easily visible and legible by persons using the public road and whether the access leading from the project area as shown on the Bio Map is in fact a public road.*
- *A confirmation as to the status of the road in question, including an annotated map/orthophotograph, should be obtained from the Road Authority concerned and provided to the FAC.'*

The DAFM responded to the request for the further information on 4th April 2023 as follows;

'Re: FAC121/2022 CN85683

The inspector has replied as follows: 'We have checked the status of the road and it is not public. As such this answers both questions posed. Site notices not up to standard as they were erected along a private lane.'

Appeal

There is one third party appeal against the decision and the full grounds of appeal and submissions received by the FAC have been provided to all the parties. The DAFM informed the FAC that the documents required under the Forestry Appeals Committee Regulations 2020 are provided through the forestry licence viewer and the parties were notified of this.

In summary, the grounds of FAC 121/2022 submit;

- Undue process citing an untimely publication of decision and failures in relation to public participation submitting that the appellant, who made a submission during the processing of the application, should have been notified of the opportunity to comment during the additional 30-day consultation period,
- That the application is not legally compliant (Forestry Regulations 5 (2), II (I)) – submitting mapping deficiencies,
- That there is a Site Notice deficiency submitting that the error in identifying the public road network leads to the Site Notices not being in compliance with requirements of the Forestry Regulations,
- That licence condition 2 cannot be understood by the layperson citing inability to access documentation and that licence conditions are not consistent with the reason for the condition,
- That the project is not consistent with Leitrim County Development Plan,

- That access is not assured, submitting that given the misidentification of the public road network by the applicant's forester the issue of adequate access becomes an issue and that it cannot be assured from the project documentation that the applicant has a right of way to access the lands,
- Woody Weed Removal - submission in relation to DAFM's continued use of the term Woody Weed Removal, and that any removal of woody shrubs needs to be justified and that there is no justification given in the assessment of the project,
- EIA Screening - submission that DAFM's EIA Screening process is flawed in law as it uses simple checkbox responses with no reasoning for the response given for a number of the questions,
- Cumulative Impact - submission that DAFM's process for assessing cumulative impact in the context of the Directive is flawed as it restricts, without adequate reasoning, the spatial and temporal criteria applied,
- Submission that there is an inadequate ecological / environmental assessment, and that there is inadequate setback for hedgerows,
- In relation to Article 12 of the Habitats Directive (Annex IV species) grounds submit that the strict protection regime under Article 12 of the Habitats Directive is entirely separate to the AA procedure under Article 6(3) of the Habitats regime, subject to separate rules and requirements, and that forestry applications need to be screened not only for implications for European sites and their species, but also for the potential implications on the Annex IV (a) species,
- Landscape impact – submits an inadequate reasoning for view taken by DAFM,
- Water Quality - submits that the response in the (EIA screening form) in relation to WQ is an error as the licence includes mitigation to protect water quality meaning that the application and its associated operations clearly threaten the achievement of good ecological status,
- Submits flaws in the Appropriate Assessment of the proposal citing flaws relating to screening out distances, that mitigations are not written with sufficient precision, contentions relating to siltation and sedimentation, weather condition management, otter, Peregrine falcon, operations monitoring, and In Combination Assessment,
- Contention that the afforestation of the lands is inappropriate as the lands are currently of High Nature Value and DAFM's assessment of this project has not shown them to be otherwise,
- Operability – submitting grounds relating to the operability of Archaeological conditions, and Hedgerow Crossing Points,
- Submission in relation to 'The Right Tree in the Right Place for the Right Reasons'.

The Appellant requests an oral hearing of the appeal.

The DAFM provided a statement (SOF) to the FAC in relation to the appeal which was provided to the parties. The statement provided an overview of the processing of the application and the steps and dates involved. The SOF sets out that the application was submitted on 17th January 2020, was advertised on 7th February 2020, and that there were no referrals made. It also includes content addressing the grounds of appeal on the DAFM's behalf from an ecologist, an archaeologist, and a forestry inspector, and confirms that the site was field inspected on 14th March 2022. The SOF records that one submission was received in relation to the application on 28th February 2020.

Considerations of the Forestry Appeals Committee

The FAC in the first instance considered the Appellant's request for an oral hearing of the appeal. 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.

The FAC considered the grounds in the appeal relating to a lack of due process arising from delay in the publication of the decision. The grounds also submit that the appellant (having made a submission on the application on 28th February 2020) should have been notified of the second period of publication consultation which arose from the completion of an AAR. The FAC noted that the date of the issue of the licence was the 19th of August 2022 (being a Friday) and that the public was notified of the decision on 22nd of August 2022 (being a Monday). The FAC also noted that the application and a number of other documents were available for a number of months before the decision was made and that the licence decision was also published on the Forestry Licence Viewer (FLV). The FAC does not consider that there was undue delay, and notes that the appellant has submitted an appeal for consideration by the FAC. The FAC is satisfied that the DAFM has complied with its obligations under the Forestry Act and Regulations with respect to notification of the public of its decision and is not satisfied that a serious or significant error occurred in relation to the processing of the application as it relates to these grounds.

The FAC considered the grounds in the appeal in relation to EIA screening and related matters and in this context noted the submission by the DAFM in the SOF relating to EIA assessment. This ground of appeal questions the DAFM's EIA Screening process and submits that it is flawed in law as it uses simple checkbox responses with no reasoning for the response given for a number of the questions in the assessment. The FAC noted that the DAFM carried out an Assessment to Determine EIA Requirement dated the 18th August 2022 in advance of making the decision to grant the licence subject of this appeal. In this assessment 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, and determined that the project was not required to undergo EIA. The FAC noted that the procedure as recorded provides for further commentary to be recorded and that same confirms that the file was desk assessed and was also field assessed by the inspector previous to that. 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.

The grounds of appeal question the DAFM criteria for cumulative impact and the appellant submitted a map titled "Cumulative forestry around CN85683". The FAC noted that the DAFM in their considerations on the "Cumulative effect and extent of project" recorded answers to questions in the Assessment to Determine EIA Requirement relating to, existing afforestation of 3 years or less and any proposed afforestation within a 500m radius exceeding 50 Ha., the approximate % forest cover in the underlying waterbody (or waterbodies) and within 5km, both currently and five years previous. The DAFM concluded

that based on the extent of the forest cover that the cumulative effect of this proposal was not likely to have a significant impact. The FAC however noted that while the Minister recorded a separate characterisation of plans and projects in the area in the In-combination Report carried out as part of the AA process and dated the 17th June 2022, that this is not explicitly cross-referenced in the EIA Determination. The EIA Determination itself only refers to forestry projects and references a 'Last Spatial Run Date' of 18th August 2022. While the FAC would consider it reasonable that the record as a whole should be considered and that the reasons for considering that the proposal is not likely to have a significant effect on the environment might be found in separate documents, based on the foregoing it is not apparent if adequate consideration was given to cumulative effects (including non-forestry projects) when making the determination for EIA requirement. The FAC considers this to be an error in the processing of the application.

The FAC considered the ground of appeal which contends that there has been inadequate assessment of the impact of the proposal on species in Annex IV of the Habitats Directive, with a particular reference to bats. The FAC noted that the site was inspected and that the appellant has adduced no evidence as to the presence of annex IV species in the area of the proposed afforestation. The lands in this case are agricultural in nature and the existing hedgerows are required to be retained. In addition, there are water setbacks provided for and included as a requirement of licence. The FAC further noted that the Environmental Requirements for Afforestation 2016 require an ecological report for Annex IV species where they are known to be present or have been observed. The FAC considers that the granting of the licence does not remove or supersede any other legal obligations on the Applicant or their agents. The FAC is not satisfied that the DAFM has erred regarding this ground of appeal.

The FAC considered the grounds in the appeal relating to Woody Weed Removal and that any removal of woody shrubs needs to be justified. In this context the FAC noted the response to these grounds from the ecologist in the correspondence dated 9th December 2022 wherein it is stated;

'The mitigation in AAR provided states: "Retain all existing hedgerows, treelines and field boundaries onsite". In addition, in the section referring to Otter, it states: "Do not remove or disturb any areas of wet woodland, carr (woodland growing on wet ground or waterlogged soil usually dominated by alder or willow species) and thick scrub on the site within 50 m of an aquatic zone or within 20 m of a relevant watercourse."

Any additional scrub found in field can be removed in order to enable successful completion of afforestation project. This is carried out on an ad hoc basis and in this case will not entail the removal of any significant amount of scrub. There will be some regenerating Alder saplings for example where no management has occurred. The mitigation proposed follows Environmental Requirements for Afforestation (DAFM, 2016) and the Forestry Standards Manual (DAFM, 2015) and there is conventional option to retain hedgerows with 3-5m set-back. A site walkover was carried out with DI on 14 March 2022 and no Annex I habitats were noted.

The FAC noted the Ecologists response in relation to Point 4 in the grounds regarding Woody Weed Removal wherein the appellant states *“DAFM's continued use of the archaic term Woody Weed Removal in its documentation indicates just how far behind the curve it is in terms of biodiversity protection. Add to this the fact that the Forestry Biodiversity Guidelines are over 22 years old. Any removal of woody shrubs needs to be justified. There is no justification given in the assessment of this project”*. The said response states that *‘The Environmental Requirements for Afforestation (December 2016) replace those measures relating to afforestation contained within the Forest Biodiversity Guidelines and other Forest Service Environmental Guidelines namely Forestry & Water Quality Guidelines, Forestry & Archaeology Guidelines and Forestry & the Landscape Guidelines. The overall aim of these Environmental Requirements for Afforestation is to ensure that the establishment of new woodlands and forests is carried out in a way that is compatible with the protection and enhancement of our environment, including water quality, biodiversity, archaeology and landscape. Sites proposed for afforestation must also meet the minimum timber productivity requirement set out in the Forest Service Land Types for Afforestation document, and this assessment should be carried out by the Registered Forester before advancing to application stage’*. The FAC also noted the content of the DAFM statement to it which sets out that Woody Weed Removal is correctly marked as a possible operation as some areas of scrub may need to be removed as part of the afforestation project including fencing. The FAC concluded that the appellant has not provided convincing evidence that the DAFM has erred in its processing of the application as it relates to this ground of appeal.

The grounds of appeal contends that Condition 2 of the licence cannot be understood by the lay-person. The FAC finds that Condition 2 states: *‘The afforestation project and all associated operations shall be carried out and completed in accordance with the measures set out in the Environmental Requirements for Afforestation and the Forestry Standards Manual (as amended by periodic Circulars). [Note: These documents may be found on the Department's website, alongside the amending or updating Circulars, which are arranged by year.]’* The FAC understand that this is a standard condition used in all afforestation licences. The substance of the ground of appeal refers to the understanding of the contents of the two documents, the up-dating of the two documents, and the availability of circulars on the DAFM website and as such not all of the matters are within the remit of the FAC. In dealing with the actual wording of the condition the FAC considers that the condition, taken within the ordinary meaning of the words, can be readily understood by a lay-person demonstrating average judgment. The FAC considers that requiring adherence with standards of good practice is common and accepted practice across a number of sectors including Forestry. The FAC is not satisfied that the DAFM has erred in the processing of this application as it relates to this ground of appeal.

In relation to the submission in the grounds that the licence conditions are not consistent with the reasons given with particular reference to Condition 3 of the licence *“All works to adhere to the specific Operational Proposals set out in Appendix A. Reason: In the interest of clarity.”* The FAC considers that the condition, taken within the ordinary meaning of the words, can be readily understood by a lay-person demonstrating average judgment and that the reason given relates directly to the conditions in a clear manner. The FAC is not satisfied that the DAFM has erred in its processing of the application regarding this ground of appeal.

In relation to the grounds in the appeal regarding 'Right Tree in the Right Place for the Right Reasons' it is contended that the existing biotic community has not been considered adequately and that planting of exotic conifers does not accord with the existing biotic community. The FAC noted the documentation on file, the details of the proposal which includes 2.19 ha of ADB, the conditions under which the proposal would occur including the retention of all existing trees. The FAC further considered the nature of the proposal and the lands on which it would occur and that the site was field inspected. The FAC considers that due regard has been had to the protection of the existing biotic community. The FAC is not satisfied that the DAFM has erred regarding this ground of appeal.

The FAC considered the grounds in the appeal regarding operability of Archaeological conditions. In this context the FAC noted the detailed response on file from the DAFM archaeologist dated 22nd September 2022. The FAC concluded that the appellant has not provided convincing evidence to demonstrate that the DAFM has erred in the processing of the application as it relates to the grounds in the appeal regarding archaeology.

The FAC considered the grounds in the appeal regarding to AA and related matters. In that context the FAC finds on file an AASD dated 20th June 2022 described as being for afforestation project CN85683, an AAR dated 20th June 2022 described as being for afforestation project CN85683, and an AAD described as being for afforestation project CN85683, located at Lisgorman, Co. Leitrim. The AAD is dated 15th August 2022 and outlines in section 4 the mitigation measures for the project. The AA documentation examines ten sites of which five were screened out and five sites (Glenade Lough SAC 01919, Lough Gill SAC 001976, Sligo/Leitrim Uplands SPA 004187, Cummeen Strand, Drumcliff Bay (Sligo Bay) SAC 000627, and Cummeen Strand SPA 004035) were screened in for stage two AA. Two of the European Sites (Glenade Lough SAC 001919 and Sligo/Leitrim Uplands SPA 004187) were originally screened out on the recommendation of the District Inspector but were screened in following a verification process by a consultant Ecologist on behalf of the DAFM. The AAR dated 20th June 2022 described as being for afforestation project CN85683, located at Lisgorman, Co. Leitrim examined the five screened in sites and outlines the mitigation measures required. The record in the AAR includes other plans and projects considered in combination with the proposal. The In-combination report / statement which is recorded as having been done on 17th June 2022 includes the following wording in it;

'It is concluded that there is no possibility that the proposed Afforestation project CN85683, with mitigation measures set out in Section 4, will itself, i.e. individually, giving rise to an adverse effect on the integrity of the following European Sites and their associated Qualifying Interests / Special Conservation Interests and Conservation Objectives:

- *Glenade Lough SAC 01919*
- *Lough Gill SAC 001976*
- *Sligo/Leitrim Uplands SPA 004187*
- *Cummeen Strand, Drumcliff Bay (Sligo Bay) SAC 000627*
- *Cummeen Strand SPA 004035*

Therefore, there is no potential for the proposed project to contribute to any cumulative adverse effect on the integrity of the above European Site(s), when considered in-combination with other plans and projects. Furthermore, it is considered that the regulatory systems in place for the approval, operation (including any permitted emissions) and monitoring of the effects of these other plans and projects are such that they will ensure that they too do not give rise to any adverse effect on the integrity of these European Sites'.

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. The FAC considers the conclusion stated above to be an error as it suggests that the decision maker has not considered effects that might arise from the proposal which themselves may not be significant but which in-combination with other plans and projects could result in a significant effect on a European site. The FAC would also understand that after concluding that the project itself would not have a significant effect on a European site, the DAFM should also consider other plans and projects and determine whether the project in-combination with other plans could have a significant effect. It is also noted that the effects that were considered in the In-Combination Statement and the AASD were 'adverse effects' whereas it should have been 'significant effects'. The FAC considered these to be serious errors in the processing of the application.

The FAC considered the grounds in the appeal submitting that as the DED of Cloonlogher in which this project lies has a Teagasc HNV figure of 4.26 out of 5 for its potential to be considered as HNVF, that this puts it in the top 5% in the country and the contention that the afforestation of these lands is inappropriate as the lands are currently of High Nature Value. The FAC noted that this ground of appeal was submitted 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. These regulations were repealed by EU Regulation 2021/2115 which governs the rules that apply to support financed by the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development. The FAC, as established under the Agriculture Appeals Act 2001, as amended, has no role in relation to the administration of grant-aid schemes and is confined to matters relating to the issuing of a licence.

The FAC considered the grounds in the appeal relating to the absence of a referral of the application to the Local Authority and in relation to compliance with the Leitrim County Development Plan. The FAC noted the submission in the DAFM statement to it where it sets out that DAFM is the competent authority for issuing forestry licences and that referrals to local authorities is a matter for the DAFM. The FAC further notes the submission in the DAFM statement to it where it is set out that the landscape sensitivity for this area is High Capacity for forestry and that this is acknowledging that this area is considered acceptable for afforestation under the County Development Plan. This statement has been made available to the appellant in advance of the hearing and an opportunity to make submissions has been afforded to the appellant. The FAC notes that the appellant has not contradicted that the site in this case was located in an area that was designated as having a High Capacity for forestry. Based on the information before it, the FAC is not satisfied that the DAFM has erred in the processing of the application as it relates to these grounds of appeal.

The FAC considered the grounds in the appeal in relation to mapping errors, access and the location of the site notice for the proposal and noted the response from the DAFM to the request for further information in this connection wherein it is stated that the status of the road where the site notice was located is not public. The FAC therefore concluded that the application CN85683 does not meet the requirements of Regulation 11(1) of the Forestry Regulations 2017 (S.I. 197 of 2017) and that this is a serious error.

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal, submissions made, and the statement of fact submitted by the DAFM and the response to the further information request issued by it to the DAFM. In accordance with Article 14B of the Agricultural Appeals Act 2001 (as amended) the FAC is satisfied that a series of significant or serious errors was made in the making of the decision CN85683 and that this included a serious error in the application that was submitted. The FAC is thus, allowing the appeal and setting aside the decision of the Minister regarding licence CN85683 in accordance with Section 14B of the Agriculture Appeals Act 2001, as amended.

Yours sincerely,


Seamus Neely, On Behalf of the Forestry Appeals Committee

