



23rd November 2023.

Subject: Appeal FAC 189/2022 regarding CN86966

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, 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 189/2022 was held remotely by the FAC on 14th September 2023. The file of the licencing decision was made available to the FAC by means of the DAFM Forest Licence Viewer (FLV).

In attendance

FAC Members: Mr. John Evans (Deputy Chairperson) and Mr. Derek Daly.

Secretary to the FAC: Ms. Ciara Murphy

Decision

Having regard to the evidence before it, including the record of the decision by the DAFM, the notice of appeal, 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 CN86966.

Background

The application was previously the subject of two appeals to the FAC (FACs 105/2021 and 106/2021). The decision of the FAC was to set aside and remit the application so that a new screening determination in respect of Environmental Impact Assessment (EIA) be undertaken before a new decision be made in respect of the proposed development. The FAC directed that this was to be informed by the correct percentage of forest cover in the townland, adequate consideration of the designation of the project area as being of Low Capacity and High Designation in the Leitrim County Development Plan, and the extent of existing forest cover in the area.

For the avoidance of doubt, the decision by the FAC which is the subject of this letter is in relation to the licence dated the 21st of November 2022 and considers only those documents relied on in the making of that decision. That licence is for afforestation (CN86966) at Faughary County Leitrim. The licence decision pertains to the afforestation of a stated area of 15.75ha over 2 sub plots comprising one plot of an area of 5.45ha in which it is proposed to plant broadleaves, and a plot of 10.28ha which will be predominantly Sitka Spruce. 1,700 metres of fencing is also proposed. The site is to be accessed at the northern corner from the public road. The site is part of a wider forestry. There are watercourses crossing the site.

The project area is described in the application documentation as located on an enclosed, exposed and sloped site in an upland area ca. 3km to the north-west of Manorhamilton at approximately 210-270m Ordinance Datum on an old agricultural site composing of wet grassland (GS4) over peats and peaty gleys. The site has a few small upland eroding tributaries (FW1) to the Owenmore River found downstream at Manorhamilton. There are a number of mature broadleaf dominated treelines (WL2) with associated earthbanks (BL2) on site around a small derelict dwelling (BL3). There are small pockets of trees and an area of scrub (WS1) close to the main stream. There are small neglected drainage ditches (FW4) and earthbanks (BL2) throughout. The site is used by grazing sheep. The site lies adjacent to an extensive area of conifer plantation (WD4). Access to the site is via a roadway (BL3) to the north-west corner of the site. The slope across the site is flat to moderate, less than 15%. Ground preparation is mounding with pit planting. No fertiliser is proposed in plot 1 and 350 Kg Granulated Rock Phosphate application is proposed in plot 2.

The site is shown to be located within the WFD River Waterbody IE_WE_350080400 Owenmore Manorhamilton. Publicly available mapping data from the EPA indicates the status as good (2013-18) and in relation to risk is indicated as not at risk.

On file are the original application location, fencing, species and biodiversity maps. Further mapping was submitted in response to a Further Information Request issued by the DAFM. An NIS was also submitted and is uploaded on the FLV. The NIS identified Natura sites within 15 km and screened in Lough Gill SAC (001976), Glenade Lough SAC (001919) and Sligo/Leitrim Uplands SPA (004187) for full Appropriate Assessment.

In relation to Glenade Lough SAC, the NIS considered whether there was a potential for the project to create an adverse effect on the sites Qualifying Interests (QIs) and the achievement of the corresponding Conservation Objectives and concluded that there is potential for indirect impacts to Glenade Lough SAC via the source-pathway-receptor represented by the hydrological links along the tributary streams on site which flow to the Owenmore River 3.21km to the south and into Lough Gill SAC. The site drains into the streams via drains on peaty soils which are inherently unstable and subject to erosion. The site is identified on a precautionary basis due to the connection between Owenmore River and Glenade Lough, despite the direction of flow in the opposite direction from Glenade Lough SAC. Indirect impacts via disturbance and silt and sediment, chemical/ hydrocarbon loss and spread of invasive species and pathogens are not ruled out for White-clawed Crayfish (*Austropotamobius pallipes*) which may utilize the Owenmore River to migrate to Glenade Lough.

In relation to Sligo/Leitrim Uplands SPA, the NIS considered whether there is a potential for the project to create an adverse effect on Special Conservation Interests (SCIs) and the achievement of the corresponding Conservation Objectives and if so, describes the nature, severity, mechanism and timeline of the adverse effect. Due to potential foraging distance of the Peregrine Falcon Falco species several mitigations are outlined to ensure there is sufficient broadleaf habitat available to harbour prey species.

In relation to screened in sites potential impacts and mitigations are identified in the NIS. This concludes that with the proposed mitigations stated in Sections 3 and 4 applied, it can be concluded that there would be no effects on the associated Natura sites.

DAFM Assessment

The application was subject to desk and field assessment by the DAFM.

A visual impact assessment was requested by DAFM on the 30th November 2021 including an accompanying landscape map. This was uploaded on the FLV on the 14th December 2022. Further information was requested on the 8th March 2022 indicating that a landscape plan was required for the proposal as the area is considered in a low capacity area for forestry as outlined in the Leitrim County Development Plan. DAFM directed that the landscape plan was to take note of this and the plan should be developed examining species choice and overall plantation design.

On the 7th June 2022, as per FLV, mapping was submitted including contour and biodiversity maps and an untitled map which indicated planting and landscaping.

An In-Combination Statement completed on the 06/09/2022 was uploaded onto FLV on the same date is entitled *Appropriate Assessment Screening Report and Determination Appendix A: In-combination report for Afforestation project CN86966* and this concludes that this project, when considered in combination with other plans and projects, will not give rise to any significant effect on the above European Site(s) and notes that the European Site(s) that have not been screened out by this screening exercise would be progressed to, and addressed in, Stage 2 Appropriate Assessment.

An undated Appropriate Assessment Screening Report & Determination (AASRD) was prepared and uploaded on the FLV on the 21st November 2022. This refers to Lough Gill SAC IE0001976 as being screened in for full Appropriate Assessments, and lists screened out sites as Arroo Mountain SAC IE0001403, Lough Melvin SAC IE0000428, Boleybrack Mountain SAC IE0002032, Lough Melvin SAC UK0030047, Glenade Lough SAC IE0001919, Ben Bulbin, Gleniff And Glenade Complex SAC IE0000623, Sligo-Leitrim Uplands SPA IE0004187 and West Fermanagh Scarplands SAC UK0030300.

The project was the subject of an Appropriate Assessment Determination (AAD) dated the 3rd November 2022 and uploaded on the FLV on the 21st November 2022. In section 3 Appropriate Assessment it is indicated;

“the Minister determined that an Appropriate Assessment of the activity proposed under CN86966 was required in relation to the above screened in European sites. For this reason, the applicant submitted a Natura Impact Statement (dated 04/08/2020) to facilitate the Minister carrying out an appropriate assessment. A consultant Ecologist acting on behalf of the DAFM

subsequently evaluated the submitted NIS, defined as "a report comprising the scientific examination of a plan or project and the relevant European Site or European Sites, to identify and characterise any possible implications of the plan or project individually or in combination with other plans or projects in view of the conservation objectives of the site or sites, and any further information including, but not limited to, any plans, maps or drawings, scientific information or data required to enable the carrying out of an Appropriate Assessment".

The following deficiencies in the NIS were identified and resolved to the point whereby an AA Determination could be made, as detailed:

- The NIS has screened in the Glenade Lough SAC IE0001919, however no downstream hydrological connection is present between the project and this European site and therefore no pathway exists which could adversely effect the QI's of this SAC.*
- Similarly, the Sligo/Leitrim Uplands SPA IE0004187 were screened however following examination of the DAFM Bird Foraging Table (v06Jan20) the project area was found to be located outside of the core foraging range of the SCIs for which Sligo/Leitrim Uplands SPA is designated. Therefore, these European sites have been screened out for the DAFM's screening determination.*
- The mitigation measures provided in Section 4 of the applicant's NIS were not found to be robust enough to prevent adverse effects to water quality.*
- Section 4 of this report includes the measures proposed within the NIS, along with additional DAFM mitigation measures where appropriate.*

Section 4 refers to Appropriate Assessment Determination and outlines mitigations and also concludes; *"The basis for this AA Determination is as follows:*

While there is a hydrological connection between the project and the River Barrow and River Nore SAC IE0002162, implementation of mitigation measures, will ensure that there is no adverse effect on the integrity of the SAC, alone or in combination with other plans and projects.

In combination effects were assessed prior to meeting this determination. The mitigations outlined will ensure that the proposed project will not represent a source and, as such, there is no potential for the project to contribute to any significant cumulative effects, when considered in combination with other plans and projects. Therefore, DAFM deems that the proposed project, when considered in-combination with other plans and projects, will not give rise to the possibility of significant effects on any European site 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 project was also the subject of an Ecology Report as part of the evaluation of the project dated the 3rd November 2022 and uploaded onto the FLV on the 21st November 2022. Reference is made to; Breeding birds, Pine Marten, Local Bat species and Common Frog which are afforded protection under the Irish Wildlife Act 1976 (as amended) and that is an offence to intentionally kill or injure a protected species or to wilfully interfere with or destroy the breeding place or resting place of a protected wild animal. There is also reference to the potential of the project leading to the loss of bat foraging and commuter routes should the hedgerow/treeline habitat be shaded out by the GPC3 plantation, though it is noted that the proposal provides for a 5m setback with 3 rows of broadleaf trees in Plot 2 (included as

mitigation with the associated AAD, dated 03/11/2022). It is also observed that submissions were previously made in relation to Hen Harrier and these were the subject of a previous FAC determination. A series of recommendations are outlined.

Other documentation included Inspector's Certification Report which states Date Inspection Certified: 16/11/2022 and 21/11/2022 recommended approval with conditions which are largely stated as condition no 5 of the licence approval. The Inspector's Certification Report, Site Details Report and Site Plots report uploaded on the FLV on the 21st November 2022.

An Assessment to Determine EIA Requirement dated the 21st November 2022 and uploaded on the FLV on the 21st November 2022 refers to the approximate % of forest cover at present in the applications townland as 51.12% (addressing the issue in the previous application) and the approximate % of forest cover currently in the underlining waterbody as 34.17%. the assessment responds yes to is this site within a prime scenic area in the County Development Plan or within an area listed in the Inventory of Outstanding Natural Landscapes or in a Landscape Conservation Area?

A number of third party submissions are on file as are a number of responses from referral bodies. Leitrim County Council in responses dated 8th September 2020 and 9th October 2020 objected to the project based on the objectives of the County Development Plan and the issue of roads. An Taisce in a response dated the 3rd of March 2021 raised concerns in relation to the cumulative impact; water quality, landscape and amenity considerations and that the proposed plot lies within an area designated as one of High Visual Amenity under the Leitrim County Development Plan 2015-2021 (CDP) and is also located within an area deemed to have a low capacity to accommodate forestry.

DAFM Decision.

The decision which is the subject of this appeal was to approve the licence, which was issued on the 21st November 2022 and uploaded to FLV on the same date subject to conditions. In addition to general related conditions these included that all existing trees and hedgerows within the site shall be retained; traffic management plan to be put in place during the course of afforestation operations and to consult with Leitrim County Council prior to commencement of any work; adhere to the mitigation measures set out in the attached Appropriate Assessment Determination, dated 3rd of November 2022; adhere to the recommendations of the ecology report dated 03/11/2022; adhere to the measures set out in the Landscape plan submitted 7th of June 2022 and protect any upstanding structures located at ITM 591493, 842891 and a 10m wide unplanted buffer zone/setback should be established around any upstanding remains of the historic buildings/structures within and the proposed planting area.

Appeal

There is one appeal against the decision to grant the licence and a brief summary of same is included below. The full grounds of appeal were considered by the FAC and are to be found on file.

The grounds of appeal submit that there is a failure to address the previous FAC decision. In particular the issue of visual impact is not addressed; that there is no adequate or meaningful consideration of the County Development Plan designation; that no visual impact statement was submitted and nothing other than a landscape map was submitted in relation to this. It is also submitted that there was no

consultation interaction with Leitrim County Council or mapping of forestry in the area and no clarification in the EIA screening of why it was not considered that forestry would be a significant visual impact based on cumulative impact.

The grounds of appeal also submit that there is a lack of reasoning in relation to the assessment of EIA screening determination. Reference is made to the inadequacies of the overall process the lack of rationale or scientific basis in the process. Reference is made to the issue of cumulative effect the lack of rationale or scientific basis in the process. Reference is also made to the issue of Landscape impact and to the lack of rationale or scientific basis in the process. It is submitted that the determination is not adequately reasoned.

The grounds contend that the assessment does not satisfy the requirement of Article 6.3 of the Habitats Directive. In this regard reference is made to the screening out of the Sligo-Leitrim Uplands SPA, the issue of in-combination assessment, the absence of Appropriate Assessment (AA) and reference to inclusion of a site not hydrologically connected to the site and that there is no reference to the issue of management of a firebreak.

The grounds of appeal submit that the FAC needs to conduct an AA.

The grounds contend that there the licence appears to be inoperable and inconsistent with the conditions of the Ecology Report. The recommendations in relation to the common frog are specifically referred to.

Reference is made in the grounds to the Birds Directive and avoidance of the habitat of protected bird species. Specific reference is made to the absence of consideration of the Hen Harrier species.

It is contended that a policy objective of the right tree in the right place for the right reasons should be adhered to.

An oral hearing was requested.

DAFM Statement

The DAFM provided a Statement of Fact (SoF) in response to the grounds of appeal which was provided to the other parties and is on file. In summary, the statement provides an overview of the processing of the application and addresses the grounds of appeal. It indicates that the decision was issued in accordance with DAFM procedures, SI 191/2017 and the Forestry Act. It is accompanied by a response from the DAFM ecologist.

The SOF response indicates forestry cover issues were addressed, a detailed landscape plan and map were submitted to address the issues of the Leitrim County Development Plan designation and provide for buffers to soften the impact of conifers on the landscape. In relation to EIA procedures it is submitted that these were adhered to. Regarding the firebreak it is submitted that the pre submission indicates operational proposal detail and not requirements and that reference is made to the 10 metre setback in the original proposal and subsequently upgraded with broadleaves planting.

The Ecologist has also made a detailed response which in particular relates to the screening out of the Sligo-Leitrim Uplands SPA. The response restates the view that there is no likelihood of impact arising and the test is whether the project could adversely affect the integrity of the site and that there is no

evidence that this is the case. It is stated that the site is not an optimal site for the breeding and foraging range of the bird species, and that the project was assessed in accordance with Article 6.3 of the Habitats Directive. It is submitted that the assessment provided for AA screening and made a determination and this outlined the reasons for the determination and the procedures carried out in the overall process are outlined in the response. The Ecologist submits that the issue of firebreak was removed from the original proposal and replaced with broadleaves and as such a firebreak was not required to be assessed. The response states that there will not be a reduction in the habitat for the frog and that the measures outlined in the AAD will potentially protect their habitat. It is also stated that Hen Harrier and Merlin do not breed in the area and the site is not a suitable site for the species.

The FAC noted that further responses were made by parties in relation to the DAFM response and considered these.

Consideration of FAC

In addressing the grounds of appeal, the FAC considered the requirements of the EIA and Habitats Directives, 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. In relation to afforestation decisions, the function of the FAC is to hear and determine appeals of decisions of the Minister for Agriculture, Food and the Marine under Section 7 of the Forestry Act 2014 and the Forestry Regulations 2017.

In the first instance the FAC considered whether an Oral Hearing was required. The FAC considered that it had sufficient information before it in order to properly and fairly determine the appeal and that an Oral Hearing was not required. This is already indicated in the section on Hearing.

The FAC considered the submission in the grounds of appeal relating to the EIA Directive. The EU EIA Directive sets out in Annex I a list of projects for which EIA is mandatory. Annex II contains a list of projects for which member states must determine through thresholds or on a case-by-case basis (or both) whether or not EIA is required. Neither afforestation nor deforestation are referred to in Annex I. Annex II contains a class of project specified as "initial afforestation and deforestation for the purpose of conversion to another type of land use" (Class 1 (d) of Annex II). The Irish Forestry Regulations 2017 (S.I. 191 of 2017), in relation to forestry licence applications, require mandatory EIA for applications relating to afforestation involving an area of more than 50 Hectares, the construction of a forest road of a length greater than 2000 metres and any afforestation or forest road below the specified parameters where the Minister considers such development would be likely to have significant effects on the environment. The decision before the FAC relates to the afforestation of an approved area of 15.75 hectares. This project being the afforestation of 15.75 hectares is substantially below the 50 hectares threshold.

An Assessment to Determine EIA Requirement was carried out and assessed the application over a range of criteria which determined that EIA was not required and that screening for significant effects under the EIA Directive was not required in this case.

The FAC noted that the procedure as recorded provides for further commentary to be recorded and in

this case no additional comment was provided. 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 FAC noted that in relation to issue of forest cover in the area the percentage of forest cover is stated in the applications townland as 51.12% and the approximate % of forest cover currently in the underlining waterbody as 34.17% and similar percentages are referred to in other documentation including an in-combination assessment carried out part of the AA process.

The grounds of appeal question the DAFM criteria for cumulative impact in the Assessment to Determine EIA. The appellant refers to the issue of cumulative effect and the lack of rationale or scientific basis in the process. Similarly, reference is made to the issue of Landscape impact and to the lack of rationale or scientific basis in the process and therefore the determination is not adequately reasoned in the Assessment to Determine EIA to support the view that forestry is not a significant issue.

As noted, the issue of percentage forestry cover is addressed in the EIA Determination specifically in relation to cumulative effect and extent of project. The FAC noted that it is indicated that based on the extent of forestry as outlined the cumulative effect of this application is considered not likely to have a significant impact and that the amount and type of forest cover in this locality is not known to be a significant issue and there is no explanation given in relation to this conclusion.

On the related issue of landscape in the Assessment to Determine EIA it is noted that the site is referred to as within a prime scenic area in the County Development Plan or within an area listed in the Inventory of Outstanding Natural Landscapes or in a Landscape Conservation Area and it is also stated that that the forest design submitted (and any additional design improvements recommended) are sufficient to prevent any significant impact on the landscape and the design complies with the Forestry and the Landscape Guidelines with no comment in relation to this conclusion.

The issue of landscape impact is also referred to in the grounds of appeal and that there is a failure to address the previous FAC decision. In particular it is submitted that the issue of visual impact is not addressed; there is no adequate or meaningful consideration of the County Development Plan designation; no visual impact statement was submitted and nothing other than a landscape map was submitted in relation to this. There was no consultation interaction with Leitrim County Council or mapping of forestry in the area and no clarification of why in the EIA screening why forestry was not considered would be a significant visual impact based on cumulative impact.

In relation to this matter the FAC noted that a visual impact assessment was requested by DAFM including an accompanying landscape map to reflect the FAC decision and that a landscape plan is required for the proposal as the area is considered in a low capacity area for forestry as outlined in the Leitrim County Development Plan. The request also referred to that the landscape plan should take note

of this and the plan should be developed examining species choice and overall plantation design. The mapping as submitted by the applicant in relation to the current project included a contour map, biodiversity map and an untitled map which indicated planting and landscaping.

In considering this issue the FAC consider that in relation to the issue of cumulative effect and visual impact DAFM requested further details in relation to landscape assessment acknowledging the submission of Leitrim County Council and assessed the project in the context of percentage of forest cover which is consistent across documents on file, amendments in relation to species choice and overall design and that the assessment also included a field assessment. While specific comment and explanation and a greater level of consideration evidenced may have been considered to have been more appropriate in relation to the conclusions as determined, the EIA Assessment was based on relevant considerations as noted in the assessment and that DAFM concluded that based on the extent of the forest cover and supporting information that the cumulative effect of this proposal was not likely to have a significant impact. Having considered this matter the FAC have concluded that notwithstanding that greater comment could have been provided that DAFM has not erred in relation to this matter.

As noted, the screening for EIA requirement considered the proposed project across a range of criteria. However, the FAC observed that these considered only other Forestry related projects. While the FAC considers that the DAFM can rely on a complete reading of the file, and that other non-forestry projects are considered as part of the Appropriate Assessment process as part of an in-combination assessment, this is not explicitly stated in the Assessment of EIA requirement. The FAC considers that this represents an error in the processing of the licence.

The FAC considered the appraisal of the licence application relating to Appropriate Assessment. The EU Habitats 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 to undertake an Appropriate Assessment in relation to specific applications.

The FAC examined the record and statement from the DAFM and identified the same Natura sites as identified by the DAFM using publicly-available EPA maps. The FAC considered the record and the reasons stated for screening out of this site. The FAC noted that the NIS as submitted did screen in three sites Lough Gill SAC (001976), Glenade Lough SAC and Sligo/Leitrim Uplands SPA (004187). DAFM in the Appropriate Assessment Screening Report & Determination (AASRD) which is undated and uploaded on the FLV on the 21st November 2022 screened in one site, Lough Gill SAC 001976.

DAFM in the Appropriate Assessment Determination (AAD) dated the 3rd November 2022 and uploaded on the FLV on the 21st November 2022 in section 3 refers to the applicant submitted a Natura Impact Statement (dated 04/08/2020) to facilitate the Minister carrying out an appropriate assessment and a

consultant Ecologist acting on behalf of the DAFM subsequently evaluated the submitted NIS and that deficiencies in the NIS were identified and resolved to the point whereby an AA Determination could be made. The AAD noted that the NIS has screened in the Glenade Lough SAC IE0001919, however no downstream hydrological connection is present between the project and this European site and therefore no pathway exists which could adversely affect the QI's of this SAC. Similarly, the Sligo/Leitrim Uplands SPA IE0004187 were screened in however following examination of the DAFM Bird Foraging Table (v06Jan20) the project area was found to be located outside of the core foraging range of the SCIs for which Sligo/Leitrim Uplands SPA is designated. Therefore, these European sites have been screened out for the DAFM's screening determination.

In relation to this matter there arises an issue in relation to the Glenade Lough SAC. In the NIS there is a clear statement that there is potential for indirect impacts to Glenade Lough SAC CO001919 via the source-pathway-receptor represented by the hydrological links along the tributary streams on site which flow to the Owenmore River 3.21km to the south and into Lough Gill SAC (001976). The NIS does acknowledge that potential indirect impact is outlined despite the direction of flow in the opposite direction for the Glenade Lough SAC CO001919 and that indirect impacts potentially arise via disturbance and silt and sediment, chemical/ hydrocarbon loss and spread of invasive species and pathogens to the following QIs: 1092 White-clawed Crayfish (*Austropotamobius pallipes*) which may utilise the Owenmore River to migrate to Glenade Lough.

In the AAD Glenade Lough SAC CO001919 is screened out primarily on the basis of the contention that *"no downstream hydrological connection is present between the project and this European site and therefore no pathway exists which could adversely effect the QI's of this SAC"*.

However, the AASRD, in relation to Glenade Lough SAC, gives a more complete description of the rationale for screening the site out as: *"The location of the project area within a separate water body catchment to that containing the Natura site, with no upstream connection, and the subsequent lack of any hydrological connection"*.

The FAC consider these statements to be not fully consistent, and that no adequate consideration is evidenced other than no downstream hydrological connection is present to establish that no scientific doubt remains to screen out the site or that White-clawed Crayfish (which is a somewhat mobile species) may utilise the Owenmore River to migrate to Glenade Lough and the findings of the AASRD and AAD could have been more robust in setting out the basis for screening out Glenade Lough SAC.

The FAC also noted that the concludes the basis for the AA Determination is;
"While there is a hydrological connection between the project and the River Barrow and River Nore SAC IE0002162, implementation of mitigation measures, will ensure that there is no adverse effect on the integrity of the SAC, alone or in combination with other plans and projects".

In relation to this matter the FAC noted that this matter is referenced in the grounds of appeal and although it likely that this statement is a typographical error it is a significant error as the AAD finding and conclusion is a definitive statement in relation to the overall process and must clearly and

equivocally demonstrate that a site screened in within the initial screening has been screened out and the reasons for doing so outlined and the wording should clearly state the Natura site screened out. The FAC therefore have concluded that based on the information available to it, that the DAFM has seriously erred in its processing of the application as it relates Appropriate Assessment screening of the proposed project individually.

The FAC also noted that other plans and projects are recorded which were considered in-combination with the proposal and that an In-combination statement was prepared in relation to the project. The said In-Combination statement includes the passage;

"In combination effects were assessed prior to meeting this determination. The mitigations outlined will ensure that the proposed project will not represent a source and, as such, there is no potential for the project to contribute to any significant cumulative effects, when considered in combination with other plans and projects. Therefore, DAFM deems that the proposed project, when considered in-combination with other plans and projects, will not give rise to the possibility of significant effects on any European site".

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. 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. 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 in the processing of the application.

In relation to the matters raised in the grounds of appeal that there the assessment does not satisfy the requirement of Article 6.3 of the Habitats Directive and in this regard, reference is made to the screening out of the Sligo-Leitrim Uplands SPA, to the Bird Directive and avoidance of the habitat of protected bird species. Specific reference is also made to the absence of consideration of the Hen Harrier species. DAFM in a response indicates that the project was assessed in accordance with Article 6.3 of the Habitats Directive and the Sligo-Leitrim Uplands SPA was screened out with reasons for the determination and that there is no likelihood of impact arising. It is also contended that the test is whether the project could adversely affect the integrity of the site and there is no evidence that this is the case and furthermore the site is not an optimal site for the breeding and foraging range of the bird species. Hen Harrier and Merlin do not breed in the area and the site is not a suitable site for the species.

The FAC notes that the site is not within a Natura site and that it is not in a red zone in relation to the Hen Harrier species which are regularly updated. The FAC does not consider that the DAFM has erred in its processing of the application in so far as this ground of appeal is concerned.

In relation to the issue of the common frog the matters raised in the grounds of appeal and response are noted by the FAC and concluded that no evidence is presented to indicate that the DAFM erred in relation this matter.

In relation to the issue of the firebreak the FAC noted that a firebreak was included in the initial proposal and that the firebreak was removed from the original proposal and replaced with broadleaves and as such a firebreak was not required to be assessed. The FAC would also note that firebreaks and management of forestry projects are addressed in the operational requirements outlines in Forestry Manuals.

In relation to the Water Framework Directive and effects on water quality generally the FAC viewed the information on the EPA and Irish Catchments websites and current mapping and data which confirmed information contained on the DAFM file that the project is within the WFD River Waterbody IE_WE_35O080400 Owenmore Manorhamilton O_20. Mapping data indicates the status as Good (2013-18) and in relation to risk is indicated as Not at Risk. In relation to pressures forestry is not identified as a pressure within the catchment. The FAC noted the nature of the proposed planting and that ground preparation is mounding and that no fertiliser or herbicide use is proposed in the broadleave plot. The FAC also noted that the issue of water quality, including protection of water supply, was addressed in the assessment of the project, that this is reflected in the licence conditions and that the development will not have adverse effects on receiving waters. The FAC concluded that the DAFM has not erred in its processing of the application in relation to the issue of water quality.

Conclusion

In considering the appeal in this case the FAC had regard to the record of the decision, the submitted grounds of appeal, the DAFM's SOF, and all submissions received. The FAC concluded that serious or significant errors were made in the making of the decision in respect of licence CN86966. The FAC is therefore setting aside and remitting the decision regarding licence CN86966 to the Minister to reconsider the requirement for EIA, and an Appropriate Assessment screening of the proposal itself and in combination with other plans or projects under Article 6(3) of the EU Habitats Directive, before a new decision is made.

Yours sincerely,

Derek Daly On Behalf of the Forestry Appeals Committee