



22nd April 2024.

Subject: FAC 190/2022 regarding CN88131

Dear

I refer to your 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 190/2022 was held remotely by the FAC on 15th November 2023.

In attendance

FAC Members: Mr. Donal Maguire (Deputy Chairperson), Mr. Derek Daly & Mr. Luke Sweetman.

Secretary to the FAC: Ms. Vanessa Healy

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 CN88131. The reasons for this decision are set out hereunder.

Background

An afforestation licence (CN88131) at Derryhiveny North, County Galway was issued by the DAFM on the 1st December 2022.

The licence decision pertains to the the afforestation of a stated area of 17.95 hectares over 9 plots with a mix initially of GPC 3 and GPC 8 planting with a fencing length of 2,155 metres. The plots are not contiguous and are in three distinct areas. The application was submitted on the 16th January 2021 and included operational and environmental information and a number of maps including a location map, biodiversity/operational map, fencing map outlining the licence area which were uploaded on the FLV on the 16th January 2021.

The operations initially involved GPC3 planting in two of the plots with Common Alder and GPC3 planting comprising 85% Sitka Spruce and 15% in the remaining plots. Ground preparations of the area is indicated as mounding with slit planting with fertiliser 250Kg/ha of Granulated Rock Phosphate and vegetation management carried out manually in addition to herbicide control in year 1.

The site is accessed via the local road network. There are watercourses crossing and adjacent to the site which is relative close proximity to the River Shannon and is situated circa 380 m west of River Shannon Callows SAC and Middle Shannon Callows SPA.

The project area is described in the documentation as having a flat to moderated slope at approximately 20/40m OD. The underlying soil types are indicated as grey brown podzolics/ brown earths (24%), surface water gleys/ ground water gleys (16%) and cutaway/ cutover basin peats and blanket peats (some) (60%). The portion of the project area underlined by peat soils is adjoined by an aquatic zone adjoining Plot 3.

Further information was requested 17/07/2021 referring to two distinct areas of emergent Birch woodland in Plot 1 are regenerating naturally and should be mapped and protected as emergent Native Woodland as part of the project as Biodiversity Plots, subject to scheme rules. Soil test and analysis was required for Plot 5 to guide species choice. Lower areas of Plot 3 and Plot 2 it was indicated are prone to flooding and linked to Shannon Callow and areas liable to flooding should be excluded. Shell marl areas of Plot 3 should also be mapped and excluded.

Further information was submitted in response to this request including soil analysis report uploaded to the FLV on the 13/07/2021, revised biodiversity maps dated 19/07/2022 and uploaded on FLV on 19/07/2022 and revised species maps outlining four bio plots 4,5,8 and 9, two plots (nos 3 and 8) with alder and four plots GPC 3 (plots 1,2 and 6) uploaded on FLV on 19/07/2022. The biodiversity maps provide for a 20m setback from aquatic zones on peat soil, a 10m setback from aquatic zones on mineral soils, a 5m setback from relevant watercourses, a 4m setback from the external boundary, a 5m setback from hedgerows, a 10m setback from the public road and a 60m setback from dwelling/ houses (30m with consent).

This project is within the Shannon [Lower]_SC_030 sub-catchment WFD ID code IE_SH_25S012350 and the Shannon (Lower)_030 river waterbody which, in terms of risk is referred to by the EPA as under review and in previous cycles had an 'Unassigned' status which is now 'Moderate' with low confidence and was assessed by modelling.

DAFM Assessment

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

An Appropriate Assessment Screening Report & Determination (AASRD) is found on file dated 14/09/2022 and uploaded on FLV on same date. It is marked as prepared by Shannon O Donnell, Ecologist (reviewed by Donna O'Halloran, Ecologist), of Fehily Timoney & Company on behalf of the Minister for Agriculture, Food and the Marine) and records considerations of 20 Natura sites within 15 kilometres Middle Shannon Callows SPA IE0004096, River Shannon Callows SAC IE0000216, Ardgraigue

Bog SAC IE0002356, Redwood Bog SAC IE0002353, Lough Derg, North-East Shore SAC IE0002241, Lough Derg (Shannon) SPA IE0004058, River Little Brosna Callows SPA IE0004086, Kilcarren-Firville Bog SAC IE000064, Barrougher Bog SAC IE0000231, Arragh More (Derrybreen) Bog SAC IE0002207, Ballyduff/Clonfinane Bog SAC IE0000641, All Saints Bog and Esker SAC IE0000566, Cloonmoylan Bog SAC IE0000248, Slieve Aughty Mountains SPA IE0004168, Liskeenán Fen SAC IE0001683, Rosturra Wood SAC IE0001313, Ridge Road, SW of Rapemills SAC IE0000919, Pollnacknockaun Wood Nature Reserve SAC IE0000319 and River Suck Callows SPA IE0004097.

The AA screening considers each site in turn and records a screening conclusion and reasons. The screening document concludes that an AA was required in relation to 4 sites, the Middle Shannon Callows SPA IE0004096, River Shannon Callows SAC IE0000216, Lough Derg, North-East Shore SAC IE0002241 and Lough Derg (Shannon) SPA IE0004058.

Appendix A of the AASRD included an In-Combination Report for afforestation proposed under CN88131 which concluded that;

“there is no likelihood of the proposed Afforestation project CN88131 itself, i.e. individually, having a significant effect on certain European Sites 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. 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 significant effects on these European Sites. Therefore, it is deemed that this project, when considered in combination with other plans and projects, will not give rise to any significant effect on the above European Sites”.

DAFM Appropriate Assessment Report (AAR)

An AAR is found on file dated 14/09/2022 and uploaded on FLV on same date. It is marked as prepared by Shannon O Donnell, Ecologist (reviewed by Donna O'Halloran, Ecologist), of Fehily Timoney & Company on behalf of the Minister for Agriculture, Food and the Marine).

In assessing the four screened in sites it considered potential for adverse impact in relation to a number of species and habitats indicating while the project will not have any direct effects, adverse effects to potential foraging habitat downstream of the project as a result of changes in water quality cannot be confidently ruled out and mitigation measures are outlined.

Section 5 addressed In-combination effects and it is concluded that

“there is no possibility that the proposed Afforestation project CN88131, with mitigation measures set out in Section 4, will itself, i.e. individually, give rise to an adverse effect on the integrity of the following European Sites and their associated Qualifying Interests / Special Conservation Interests and Conservation Objectives: Middle Shannon Callows SPA IE0004096, River Shannon Callows SAC IE0000216, Lough Derg, North-East Shore SAC IE0002241 & Lough Derg (Shannon) SPA IE0004058. 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. Therefore, it is deemed that this project, when considered in combination with other plans and projects, will not give rise to any adverse effect on the integrity of the above European Sites. Note that this relates to the proposed activities under CN88131 only. Any subsequent forestry-related activity shall be subject to the DAFM Appropriate Assessment Procedure, including an in-combination assessment, prior to any future consent being granted”.

Section 6 of the AAR is an assessment of potential residual impacts and concluded, *“in view of best scientific knowledge and based on objective information, that the proposed project, alone or in-combination with other plans and projects, will have no adverse effect on the integrity of any European Site(s), in view of its corresponding conservation objectives.*

Therefore, it was determined and deemed that this project, when considered in combination with other plans and projects, will not give rise to any adverse effect on the integrity of any European Site. This relates to the proposed activities under this project only. Any subsequent forestry-related activity requiring consent/grant aid shall be subjected to the DAFM Appropriate Assessment Procedure, including an in-combination assessment with the current proposal, prior to any future consent being granted”.

The AAR also included as Appendix A an in-combination report for afforestation project CN88131 which outlines projects considered and concluded;

“that there is no possibility that the proposed Afforestation project CN88131, with mitigation measures set out in Section 4, will itself, i.e. individually, give rise to an adverse effect on the integrity of the following European Sites and their associated Qualifying Interests / Special Conservation Interests and Conservation Objectives: Middle Shannon Callows SPA IE0004096, River Shannon Callows SAC IE0000216, Lough Derg, North-East Shore SAC IE0002241 & Lough Derg (Shannon) SPA IE0004058. 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. Therefore, it is deemed that this project, when considered in combination with other plans and projects, will not give rise to any adverse effect on the integrity of the above European Sites. Note that this relates to the proposed activities under CN88131 only. Any subsequent forestry-related activity shall be subject to the DAFM Appropriate Assessment Procedure, including an in-combination assessment, prior to any future consent being granted”.

The AAR also included as Appendix B an amended Bio Map

Ecologist Report

An Ecologist Report is found on file dated 14/09/2022 and uploaded on FLV on same date. It is marked as prepared by Shannon O Donnell, Ecologist. The report refers to potential impacts in relation to the Common Lizard and indicates that *the project area is unlikely to be significantly important to this species, however, the project area contains Bio Plots and setbacks to allow for commuting. The Shannon (Lower)_030 sub-basin is currently under review, without knowing the sub-basin's status it is difficult to know if it is at risk of not attaining 'Good' status which is required by the EU Water Framework Directive*

and indicates in relation to local water quality mitigation provided in the AA Report will protect local water quality.

DAFM Appropriate Assessment Determination (AAD)

An AAD is found on file dated 14/09/2022 and uploaded on FLV on same date. It is marked as prepared by Shannon O'Donnell, Ecologist (reviewed by Donna O'Halloran, Ecologist), of Fehily Timoney & Company on behalf of the Minister for Agriculture, Food and the Marine).

It states that documents / matters such as the application information, the DAFM screening, and submissions from consultation bodies were taken into account and determined that adequate information was available to enable an Appropriate Assessment Determination to be reached for this project. and has made certain, based on best scientific knowledge in the field and the European Communities (Birds & Natural Habitats) Regulations 2011 (as amended) and the Forestry Regulations 2017, as amended, and Article 6(3) of the Habitats Directive, that the proposed project, individually or in combination with other plans or projects, will not adversely affect the integrity of any of the aforementioned European Sites, having regard to their conservation objectives, provided mitigation as indicated in the AAD is implemented.

The AAD also indicates that 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. 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 archaeologist report on file dated the 9th April 2021 recommends conditions to be included in any licence issued.

Other reports on file include a site plots report; Site Details; Pre Approval report; Inspector's Certification Report and Assessment to Determine EIA Requirement all dated the 01/12/2022 and uploaded on the FLV on the 01/12/2022.

Referrals

The application was referred to Inland Fisheries Ireland and Galway County Council who did not respond and also to the National Parks and Wildlife Service (NPWS) and An Taisce.

NPWS in a response dated 07/06/2021 recommended screening for AA due to hydrological links of plots 2 and 3 to Natura sites and prevention of habitat loss.

An Taisce who in a response dated 22/06/2021 outlined concerns in relation to Appropriate Assessment required for River Shannon Callows SAC (000216) and Middle Shannon Callows SPA (004096) and that an Appropriate Assessment should be carried out in this case as the proposed afforestation site is within the referral zone and 3 km upstream for important conservation areas under the E.U. Habitats and Birds Directives. Issues of Water Quality and Setback are raised noting that the waterway SHANNON (LOWER)_030 is directly adjacent and forms part of the border of the site of Plot 4. This waterbody is stated to be currently unassigned under the Water Framework Directive. Other considerations raised include fertiliser and the necessity of fertiliser be reconsidered and appropriately assessed in light of the soil type. A necessity of an increase in the percentage of Broadleaf Species and ABEs is referred and should be resolved before the application is approved.

Decision

The decision was to approve and the licence was issued on the 01/12/2022 and marked as uploaded to FLV on the same date subject to conditions which in addition to general related conditions included conditions that all existing trees and hedgerows within the site shall be retained; strict adherence to all mitigation conditions as per attached Appropriate Assessment Determination; strict adherence to all mitigation conditions as per attached Ecology Report; that approval on basis of revised maps provided on 19/07/2022; that all Plots to be adequately fenced and protected; that plots 4 and 5 are eligible as Bio Plots providing they include all areas of young natural regenerating Birch and are interplanted with 10% occasional groups of Pedunculate Oak in Deer shelters and a condition relating to archaeology.

Appeal

There is one appeal against the decision to grant the licence. The full grounds of appeal were considered by the FAC and are to be found on file and the Notice of Appeal and full grounds of appeal were provided to the parties.

In summary, the grounds submitted that the Forest Service failed in its obligations under the Birds, Habitats, EIA and Water Framework Directives; the FAC has four distinct sets of legal tasks including requirement for EIA referring in particular to Article 4.2 (d) and 4.3 and to the issue of cumulative assessment; the FAC must carry out a screening for AA referring to judgements Kelly v An Bord Pleanála, CJEU C 323-17 and CJEU 258 -11; there was inadequate public consultation provided for; reference is made to the AA Screening Report and the basis for screening out sites and bird species and their foraging range which do not meet the tests set out in legal judgements and the grounds refer to conditions outlined in the AAD are vague; and when taking into account other forestry projects the 50 hectare threshold is exceeded.

The appellant also includes a further submission which refers to road safety and general condition of local road network; no liaison with local house owners; issues of flooding in particular in plots 6 and 7; issues are raised in relation to the use of fertiliser and plot 7 should also be excluded from the application of fertiliser; reference is made to the poor quality of soils in the area based on soil surveys, to rock outcrops and suitability of lands for production; reference is also made to the 60 metre separation from houses and it should apply from site boundaries and not the property; reference is made to protected species and there is no assessment of bat species. to impact on agricultural operations and loss of agricultural lands.

The grounds also includes photographs.

DAFM Statement

The DAFM provided a response to the grounds of appeal (SOF) which was provided to the other parties. In summary, the statement provides an overview of the processing of the application and addresses the grounds of appeal. This records the consultation with prescribed bodies and that the application was subject to public consultation. It indicates that the decision was issued in accordance with DAFM procedures, SI 191/2017 and the Forestry Act.

In relation to the grounds of appeal the SOF submits in relation to public consultation the 14-day period allowed for making an appeal to the Forestry Appeals Committee (FAC) is a statutory requirement, pursuant to Regulations 5(1) of the Forestry Appeals Committee Regulations 2020 (S.I No 418 of 2020), as amended by Regulation 3 of the Agricultural Appeals Act 2001 9Section 14A Regulations 2021 (S.1. No 353 of 2021).

There is also an Ecology reponse to the grounds of appeal indicates that the mitigation as prescribed in the Appropriate Assessment Determination for CN88131 to avoid adverse impacts on the Middle Shannon Callows SPA IE0004096, the River Shannon Callows SAC IE0000216, the Lough Derg, North-East Shore SAC IE0002241 and the Lough Derg (Shannon) SPA IE0004058 includes a series of site specific measures as well as adhering to relevant DAFM Requirements. It is also indicated that why screening out occurred and an appropriate assessment has been carried out. Clarification is indicated as to why the site is not considered suitable for foraging by the widgeon and other bird species and field inspection confirmed this determination. Specifically in relation to flooding and application of fertilises, Plot 6 was identified as having the potential to flood and as such no fertiliser was specified as a condition. Plot 7 was not identified as having a flood risk based on flood risk mapping and a field inspection at an appropriate time of the year by the District Inspector. As such no specific condition in relation to fertiliser was included in the mitigation and fertiliser will not be applied within setbacks.

In relation to the common or viviparous lizard the species is tolerant, to a degree, of habitat disturbance; is protected under the Wildlife Act 1976, as amended and the granting of an afforestation licence does not exempt the holder from meeting any legal requirements set out under the Wildlife Act. Reference is made to the increased level of Bio plots and there will be a mosaic of habitats which will increase the diversity of the application and its biodiversity value. The design of the project, retention of hedgerows and broadleaf trees within the plots, the setbacks, associated broadleaf planting and broadleaf plots will maintain and enhance commuting and foraging.

Consideration of FAC

In addressing the grounds of appeal, the FAC considered the requirements of the EIA and Habitats Directives, the FAC considered 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.

The FAC had regard to the documentation provided through the DAFM's Forestry Licence Viewer (FLV) as notified to the parties, the notice of appeal and the statement provided by the DAFM. In relation to

Appropriate Assessment the documents submitted by the Applicant including revised proposals and further information submitted in the course of the assessment of the licence by DAFM in addition to other application information, an Appropriate Assessment Screening Report & Determination (AASRD) an Appropriate Assessment Report (AAR) and Appropriate Assessment Determination (AAD) both prepared on behalf of the Minister and two In-Combination Assessments documents which are an appendix to the AASRD and AAR an appendix to the DAFM Appropriate Assessment Screening Report, an Ecology Report and other reports and documentation prepared by DAFM.

The FAC considered the submission in the grounds of appeal relating to the Environmental Impact Assessment (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 17.95 hectares which is substantially below the 50 hectares threshold.

An Assessment to Determine EIA Requirement was carried out over a range of criteria and determined that EIA was not required. The FAC having considered this issue noted that the EIA determination covers a wide range of criteria including, water, habitats, landscape and amenity designations and the scale of the project. The FAC however noted that the cumulative impact assessment in the EIA screening refers only to other forestry projects and, although there is an In-Combination statement on file for the AA screening process, there is no evidence that other non-forestry projects were considered when assessing the potential cumulative impact of the proposal on the environment. The FAC considers this to be an error in the EIA screening in this case. The FAC found that in screening for EIA, the DAFM relied on Forest Service guidelines in relation to water quality, landscape, and archaeology but these guidelines have not been attached as conditions to the licence. Furthermore, licence Condition 2 requires adherence to the ERA (2016) and this document states that it replaces a suite of Forest Service guidelines, including those relating to water quality, landscape, and archaeology.

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 requires the Minister to screen and, if necessary, to undertake an Appropriate Assessment in relation to specific applications.

The FAC examined the record and statement from the DAFM and identified the same twenty Natura sites Middle Shannon Callows SPA IE0004096, River Shannon Callows SAC IE0000216, Ardgraique Bog SAC IE0002356, Redwood Bog SAC IE0002353, Lough Derg, North-East Shore SAC IE0002241, Lough Derg (Shannon) SPA IE0004058, River Little Brosna Callows SPA IE0004086, Kilcarren-Firville Bog SAC IE0000647, Barroughter Bog SAC IE0000231, Arragh More (Derrybreen) Bog SAC IE0002207, Ballyduff/Clonfinane Bog SAC IE0000641, All Saints Bog and Esker SAC IE0000566, All Saints Bog SPA IE0004103, Cloonmoylan Bog SAC IE0000248, Slieve Aughty Mountains SPA IE0004168, Liskeenan Fen SAC IE0001683, Rosturra Wood SAC IE0001313, Ridge Road, SW of Rapemills SAC IE0000919, Pollnaknockaun Wood Nature Reserve SAC IE0000319 and River Suck Callows SPA IE0004097 as the DAFM.

The AA screening considers each site in turn and records a screening conclusion and reasons. The screening document concludes that an AA was required in relation to 4 sites, the Middle Shannon Callows SPA IE0004096, River Shannon Callows SAC IE0000216, Lough Derg, North-East Shore SAC IE0002241 and Lough Derg (Shannon) SPA IE0004058.

The four sites were further assessed and the AAD concludes that following the full implementation of mitigation measures as identified for each site in the AAD, no adverse effect on the integrity of sites will occur, alone or in combination with other plans and projects.

In relation to the grounds of appeal as submitted that the Forest Service failed in its obligations in relation to AA and the Birds, Habitats, EIA and Water Framework Directives and the basis for screening out sites and bird species and their foraging range do not meet the tests set out in legal judgements, the FAC regarding screen-out conclusions noted the Ecologist's response to the grounds of appeal which states that "The DAFM Habitat Table (18/12/2019) was made public via 'Circular 02 of 2020 Appropriate Assessment Procedure'. See gov.ie - Forestry Grants and Premium Schemes 2014 - 2023 Circulars (www.gov.ie)". Specifically, regarding the Little Brosna Callows SPA, the FAC notes the Ecologist's response to the grounds of appeal states that the screen-out reason for this SPA "*erroneously stated that it was within the foraging range of wigeon. The SPA is 7.2km from the project and the core foraging range of wigeon was identified as 2.5km – 2.8km in Johnson et al. (2014). As such there will be no significant effects on wigeon and the application may be screened out*".

The FAC also noted that the site was the subject of field inspection by an ecologist, that the assessment was carried out following revisions in relation to the nature of planting in a number of plots following further evaluation of the project site including soil testing.

The FAC considered grounds of appeal relating to undue process. The FAC was established under the Agriculture Appeals Act 2001 to hear and determine appeals against a decision of the Minister for Agriculture under Section 7 of the Forestry Act 2014 and the Forestry Regulations 2017. In relation to

this it is noted that the FAC consideration and determination of this appeal is made in accordance with the statutory provisions as set out in Section 14B(13) of the Agriculture Appeals Act 2001 as amended. The FAC noted the response made to it relating to this ground of appeal by the DAFM in its statement wherein it set out that standard practice was followed and that the documents were uploaded on the FLV. The FAC also noted that the project was also advertised for a second public consultation as provided for in statutory provisions. The FAC does not consider that the DAFM has erred in its processing of the application as it relates to this ground of appeal.

The FAC 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 statement includes the passage,

“it is concluded that there is no likelihood of the proposed afforestation project CN82221 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. 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 significant effects on 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 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. 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 suggests 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.

In relation to the grounds of appeal and the basis for screening out sites in relation to bird species and their foraging range, it is as already noted that the site was field inspected by an ecologist and an assessment included the suitability of the site for foraging and the range of species for foraging and the basis for screening out are stated. The FAC do not consider that DAFM erred in this regard.

In relation to the issue of flooding the project was assessed in this regard and amendments were made and the issue of potential flooding was considered and addressed for the project and in particular for plots 6 and 7 and conditions were specified in relation to the use of fertiliser and setbacks.

In relation to the issue of road safety and general condition of local road network the FAC notes that the application is not a forest road application and that minimal traffic is associated with afforestation and the traffic generated would be akin to machinery used for many other agricultural activities which use the local road network.

In relation to no liaison with local house owners and separation distances from houses it is noted that table 19.2 of the Forestry Standards Manual 2015 states *"Applicant should liaise With the owners of neighbouring properties to resolve in advance any potential concerns"* which would indicate a recommendation in the interest of good forestry practice rather than a requirement. In relation to separation distances from houses the Environmental Requirements for Afforestation (2016) specify minimum dwelling setback distances and the conditions of licence require adherence to measures set out in the Environmental Requirements for Afforestation and the Forestry Standards Manual.

Regarding potential impacts on protected species, the FAC considered that the granting of an afforestation licence does not exempt the holder from adhering to any legal requirements set out under any other legislation, including the Wildlife Acts. In relation to Bats, the FAC had regard to the Ecologist's response which stated that *"there is limited foraging habitat for bats within the project area. The design of the project, retention of hedgerows and broadleaf trees within the plots, the setbacks, associated broadleaf planting and broadleaf plots will maintain and enhance commuting and foraging habitat for bats"*.

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 Shannon (Lower)_030 river waterbody and in terms of risk is referred to as under review and in previous cycles was indicated as unassigned and in relation to status as moderate. It is noted that there is reference in submissions that this waterbody is currently unassigned under the Water Framework Directive but the site has a status which is indicated as moderate.

It is also noted that the conditions of the licence decision require that all felling and planting operations are carried out in accordance with Forestry guidelines as they relate to water quality and the Code of Best Forest Practice. The FAC considered that as this decision is being remitted, any new assessment should have regard to the status of the underlying waterbody in considering the potential of the proposal to impact on water quality before the making of a new decision.

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 CN88131. The FAC is therefore setting aside and remitting the decision regarding licence CN88131 to the Minister to

complete a new screening 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