



23rd December 2024.

Subject: FAC 006/2023, FAC 007/2024 and FAC 009/2024 regarding CN92081

Dear

I refer to the appeals 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 appeals.

Hearing

Having regard to the particular circumstances of the appeals, the FAC considered that it was not necessary to conduct an oral hearing in order to properly and fairly determine the appeals. A hearing of appeals FAC 006/2023, FAC 007/2024 and FAC 009/2024 was held remotely by the FAC on 11th December 2024.

In attendance

FAC Members: Mr. Seamus Neely (Chairperson), Mr. Derek Daly and Mr. Vincent Upton.

Secretary to the FAC: Ms. Aedin Doran.

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 affirm the decision of the Minister regarding licence CN92081. The reasons for this decision are set out hereunder.

Background

A licence (CN92081) for the afforestation of an approved area of approximately 12.66 hectares at Carrownisky, County Mayo was issued by the DAFM on the 22nd January 2024.

The project involves the afforestation of an approved area of approximately 12.66 hectares in a single plot comprising mainly Sitka spruce (10.14 hectares / 85%) and additional broadleaves (2.53 hectares / 15%). The proposal also provides for 650 metres of fencing. The site is accessed via the public road network fronting the site as recorded in the application. Mapping indicates a stream to the north of the site that flows north-westerly to the sea and watercourses traversing the site. The project area is

described in the documentation as having mainly wet grassland (GS4) with a majority of soils being peaty with more mineral alluvium soils present towards the north of the site near Gortmore Stream.

The project site is located on EPA mapping as within the River Sub-Basin Gortmore Stream (Mayo)_010. Mapping data indicates the status as good and in terms of risk is not at risk.

Applicant Documentation

The application submitted included initial mapping including a biodiversity /operational map and location map marked as uploaded on the Forestry Licence Viewer (FLV) on the 15th November 2022. Further documentation submitted included a Habitat Survey and Ecological Assessment with a stated completion date of 03/04/2023 and marked as uploaded on the FLV on the 22nd January 2024. The survey identified the habitats within the site. The assessment indicates the methodology of planting as having no mound drains, inverted scrap mounding will be carried out by an excavator with slit planting of conifers and no use of fertiliser.

DAFM Assessment

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

The DAFM Archaeology report dated 19th April 2023 and marked as uploaded on the FLV on the 22nd January 2024 indicates that the area proposed for afforestation does not contain, nor is it adjacent to, any Recorded Monuments. The nearest such site is a ringfort (MA 007-025) located some 30m to the west with an intervening watercourse and a public road. Additionally, a historic townland boundary runs along the northern portion of the site. Conditions are recommended for inclusion in the licence and were subsequently attached to the licence.

A DAFM High Nature Value farmland scoring form is marked as uploaded on the FLV on the 22nd January 2024 indicates that CN92081 was field inspected on 10th October 2023 and desk assessed 19th December 2023 to score the site in relation to High Nature Value Farmland (HNVf). Following assessment, this application was scored low for HNVf. It is eligible for all forest types, subject to all other standard environmental considerations. The assessment concludes the application site is not HNVf and no additional measures are required in this connection. The document also refers to the presence and quality of HNV indicators and features and is scored as unsuitable in relation to suitability for Marsh Fritillary. A number of photos accompany the document which is unsigned but the assessment is attributed to a DAFM Ecologist in the appeal statement.

An Inspector's Site Details Pre Approval report for CN92081 and dated the 22nd January 2024 is marked uploaded on the FLV on the same date refers to the site as enclosed and exposed and having adequate access.

An Inspector's Certification Report dated the 22nd January 2024 indicates the date inspection certified as 21/12/2023 and is marked as uploaded on the FLV on the 22nd January 2024. This report recommended approval of the licence with conditions.

An Assessment to Determine EIA Requirement with a date inspection certified as 21st December 2023 is on file. It is marked as uploaded to the FLV on 22nd January 2024 and determined EIA not required.

An Appropriate Assessment Screening Report as completed by an Inspector bearing the date 22nd January 2024 indicates date inspection certified as 21st December 2023 and which is marked as uploaded on the FLV on the 22nd January 2024 identified five European sites as lying within 15km of the project area, defined as the likely zone of impact. The five sites Bellacorick Bog Complex SAC 001922; Glenamoy Bog Complex SAC 000500; Killala Bay/Moy Estuary SAC 000458; Killala Bay/Moy Estuary SPA 004036 and Lackan Saltmarsh and Kilcummin Head SAC 000516 were all screened out primarily due to distance and the lack of any hydrological connection with an overall conclusion of no likelihood of a significant effect on any European site, and Appropriate Assessment not required.

An Appropriate Assessment Screening Report Appendix A: In-combination report for Afforestation project CN92081 completed on the 21st December 2023 is marked as uploaded on the FLV on the 22nd January 2024. The report concludes *that there is no likelihood of the proposed Afforestation project CN92081, when considered individually, having a significant effect on the relevant European Site(s), as described elsewhere in the Screening Report.*

Referrals

The FAC noted, based on documentation submitted, that the application was referred to Mayo County and An Taisce with no responses received. It was also noted that there were a number of 3rd party submissions made prior to the DAFM decision.

Decision

The decision to approve and the licence issued on the 22nd January 2024 and is marked as uploaded to FLV on the same date. The licence is subject to 5 conditions which in addition to general related conditions included condition no 3 that all works to adhere to the specific Operational Proposals set out in Appendix A and condition no 5 requiring adherence to standards and also requirements in relation to archaeology.

Appeals

There are three appeals against the decision to grant the licence. The full grounds of appeal were considered by the FAC and are to be found on file. The Notice of Appeals and full grounds of the appeals were provided to the relevant parties.

In summary, the grounds of FAC 006/2024 submitted that;

- Reference is made to the effect on the Ballymuchugh River.
- There will be an issue of visual impact and it will be an eyesore.
- Concern is expressed in relation to the use of pesticides and air pollution in a residential area.
- There is a high level of forestry in the Ballycastle area with no advantage to the area other than polluting rivers and destroying natural habitats.

In summary, the grounds of FAC 007/2024 submitted that;

- Reference is made to the proposal as contrary to the Mayo County Development Plan referring specifically to bio diversity.
- Reference is made to the planting of Scots Pine in the drier area of the site and it is contended that the driest area of the site adjoins and EPA river which has a high status.
- The proposal will lead to sediment runoff into this river.
- Reference is made the current habitat of wet grassland which is a source of food for the Marsh Fritillaly butterfly a protected species.
- Reference is made to traffic issues on the road which has a cemetery and is a tourist route.
- There is no regard for the local residents.

In summary, the grounds of FAC 009/2024 submitted that;

- The proposal adjoins their grounds which is used as a sportsground.
- There was no consultation with the club which has invested in its grounds and facilities.
- Reference is made to issues of traffic.
- Reference is made to increased levels of midges and mosquitoes.
- Reference is made to the planting of Scots Pine in the drier area of the site and it is contended that the driest area of the site.
- Issues in relation to visual impact is also referred to.

DAFM Statement (SOF) to the FAC

The DAFM provided a statement (SOF) to the FAC in relation to the three appeals which was provided to the relevant parties. In summary, the SOFs for the three appeals outlines the procedure adopted by the DAFM in processing the application, the related dates and the final decision. It is submitted (among other matters) that the decision was issued in accordance with DAFM procedures, SI 191/2017 and the 2014 Forestry Act.

Specifically in relation to 006/2024 the Inspector comments assert that all water/environmental features and water quality concerns are addressed in the Environmental Requirements for Afforestation document; the proposed project area lies to the east of the Wild Atlantic Way thus not hindering any views; all landscape concerns are addressed in Section 2.7 (Landscape) of the Environmental Requirements for Afforestation; the application was referred to Mayo Co. Co. and no response was received. In the eventuality that the application of herbicide is required, this is carried out by "spot spraying" thus not allowing any of the herbicide to become airborne and effecting air quality. A HNV (High Nature Value) farmland report was assessed by DAFM ecologist and uploaded to contacts on Iforis.

Specifically in relation to 007/2024, the Inspector's comments assert that a site notice was erected, and the application was advertised on the DAFM website. The site notice was stated to be in place on the date of inspection (21/11/2022). All procedures in relation to public consultation are stated to have been followed. The road adjoining the proposal is stated as a public road. Road safety issues are said to be a matter for the local authority and or the Gardai. The application was referred to Mayo Co. Co. and no response was received. All water features and water quality concerns are stated to be addressed in the Environmental Requirements for Afforestation document. The site is stated to be improved agriculture land and DAFM do not consider afforestation on this land type to increase fire risk. It is stated that there is no evidence that an increase in biodiversity and wildlife will have an adverse effect on the farming community. The proposed project area is stated to be to the east of the Wild Atlantic Way thus not hindering any views. All landscape concerns are stated to be addressed in Section 2.7 (Landscape) of the Environmental Requirements for Afforestation. A HNV (High Nature Value) farmland report is stated to be assessed by DAFM ecologist and uploaded to contacts on Iforis.

There is also an Ecology Response specifically in relation to the Marsh Fritillary Butterfly referred to in the grounds of appeal which indicates that *the application was field inspected by an Ecologist on the 10th of October 2023. The habitat map of the site shows the application area is comprised of semi-improved wet grassland (GSI4) and improved grassland (GA1) with other features such as aquatic zones, relevant watercourses and earthbanks also present. See Habitat Map dated 10/10/2023. The semi-improved wet grassland included grass species such as Holcus lanatus (Yorkshire fog) and Agrostis stolonifera (Creeping bent), buttercups and rushes. Succisa pratensis (Devil's bit Scabious) was not identified within the application area. CN92081 was assessed under High Nature Value Farmland and it was concluded that CN92081 was not HNVf and no mitigation was required.*

Specifically in relation to 009/2024 the Inspector's comments largely mirror response to other appeals and all procedures with relation to public consultation were said to be followed. The road adjoining the proposal is stated as a public road. Road safety issues are stated to be a matter for the local authority and or the Gardai. The application was referred to Mayo Co. Co. and no response was received. All water features and water quality concerns are said to be addressed in the Environmental Requirements for Afforestation document. This is stated to be improved agriculture land and DAFM do not consider afforestation on this land type to increase fire risk. The GAA grounds lie upstream of the proposed plantation. Planting of these lands is stated not to create flooding upstream of the plantation. It is also stated that there is no evidence that an increase in biodiversity and wildlife will have an adverse effect on the neighbouring GAA club. The proposed project area lies to the east of the Wild Atlantic Way and therefore is stated not to be hindering any views. All landscape concerns are said to be addressed in Section 2.7 (Landscape) of the Environmental Requirements for Afforestation. A HNV (High Nature Value) farmland report was assessed by DAFM ecologist and uploaded to contacts on Iforis.

Consideration of FAC

In addressing the grounds of appeal, the FAC considered the completeness of the assessment of the licence application and an examination of the procedures applied which led to the decision to grant the

licence. The FAC also had regard to the documentation provided through the DAFM's FLV as notified to the parties, the notices of appeal, and the statements provided by the DAFM.

The grounds of appeal express a number of concerns in relation to impacts on the local environment and water quality. In making a decision on an afforestation licence, the Minister is required to undertake a number of processes and to have regard to certain matters. This includes, in keeping with Article 6 of the EU Habitats Directive, considering the likely significant effects of a proposal itself or in-combination with other plans and projects on European sites, Special Areas of Conservation and Special Protection Areas, having regard to the conservation objectives of those sites and determining whether an Appropriate Assessment is required. In relation to the broader environment, the Minister must also consider what likely significant effects may arise from a proposal and whether an Environmental Impact Assessment is required.

In relation to Appropriate Assessment (AA), the FAC noted that five European sites are recorded in the Appropriate Assessment Screening Report as lying within 15km of the project area, defined as the likely zone of impact and that all sites were screened out primarily due to distance and the lack of any hydrological connection with an overall conclusion of no likelihood of a significant effect on any European site, and Appropriate Assessment not required. The FAC noted that the proposed afforestation is not within a Natura 2000 site nor is it required for the management of a Natura 2000 site. The FAC has confirmed that the five sites identified for screening in the final Inspector's Certification Report are the only sites within a 15Km threshold distance for impacts to Natura 2000 sites and were the subject of an Appropriate Assessment Screening Report in relation to the potential impacts of the likely significant effects of Afforestation project CN92081.

The proposal is for the afforestation of agricultural land that lies outside and at a considerable distance from the closest European site. The current habitats on the lands have been recorded and assessed and the lands drain to the northwest directly to the sea. The lands lie in a rural agricultural landscape and the DAFM recorded other plans and projects considered in combination with the afforestation proposal. The FAC did note that the screening document refers to considering *cumulative adverse effects*. The FAC considered the reference to adverse effects to be an error as the FAC would understand that the screening is to consider the potential for any significant effects to arise, whether positive or negative, in order to determine whether an Appropriate Assessment is required. However, having regard to the nature, scale and location of the proposal and the record of the decision, the FAC considered that it is clear in a fair reading of the process that the correct test was applied in practice.

The DAFM has determined that there is no likelihood of the project having any significant effect, either individually or in combination with other plans and projects, on a European site. The FAC is satisfied that the procedure completed by the Minister is correct and is not satisfied that the Minister made a serious or significant error in the making of the decision in this process.

In relation to Environmental Impact Assessment, the FAC noted that the DAFM carried out an Assessment to Determine EIA Requirement that is marked as certified on the 21st December 2023 and

also bears the date 22nd January 2024. 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 which determined that the project was not required to undergo EIA. The FAC noted the responses made in the determination to the criteria and also the response in relation to submissions made and do not consider that DAFM erred in the determination.

In relation to In-Combination assessment 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, if required, an 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.

In reviewing the submitted documentation in relation to the DAFM's in-combination assessment the FAC noted that the in-combination assessment which was completed on the 21st December 2023 The report concludes *that there is no likelihood of the proposed Afforestation project CN92081, when considered individually, having a significant effect on the relevant European Site(s), as described elsewhere in the Screening Report.*

The FAC noted that the document includes a reference to there being no likelihood of residual effects that might arise from the project. The FAC considered this to be an inappropriate use of the term residual as the word is more commonly used in the context of what might remain after an action has occurred. In the context of Appropriate Assessment, the term residual effects is more commonly employed in relation to considering the remaining effects or impacts that may arise after mitigation or other measures have been enacted. While unfortunate, the FAC did not consider that the use of the word could be considered a serious or significant error in the overall context of the proposal and the process adopted as it is clear that mitigation measures were not relied upon in making the screening conclusions.

The grounds of FAC 007/2024 submit that the proposal is contrary to the County Development Plan. The decision before the FAC is that of the Minister for Agriculture, Food and the Marine to grant an afforestation licence under the provisions of the Forestry Act 2014 and the Forestry Regulations 2017. The FAC noted and finds that the DAFM In-Combination Report records that this report had regard to an outdated County Development Plan (Mayo County Development Plan 2014-2022) at a time when a new County Development Plan had been adopted. The FAC found that the new Mayo County Plan 2022-2028 was adopted by the Elected Members of Mayo County Council on the 22nd June 2022 and came into effect on the 10th August 2022. The correct County Development Plan is identified in the Ecology Report submitted with the application. The FAC considers that this represents an error in the processing of the application in this case but having reviewed the current plan and also that the assessment by DAFM included an evaluation of High Nature Value farmland scoring and ecological review the FAC did not consider this a serious or significant error in the context of the related grounds of appeal or, considering

the nature, scale and location of the proposal and the relative distance to a European site and the reasons provided for the screening conclusion.

In relation to Environmental Impact Assessment, the FAC noted that the DAFM carried out an Assessment to Determine EIA Requirement that is marked as certified on the 21st December 2023 and also bears the date 22nd January 2024. 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 which determined that the project was not required to undergo EIA. The FAC noted the responses made in the determination to the criteria and also the response in relation to submissions made and do not consider that DAFM erred in the determination.

Specific to the grounds of appeal the appellants have raised concerns in relation to visual impact. In relation to visual impact any alteration of the landscape is a visual change but it is noted that the County Development Plan does not seek to preclude forestry in the area and that the site and although located in a coastal area, is not impairing views of the coastline and the proposal was referred to the planning authority who did not respond. The land is currently in agricultural use and located in a rural landscape of agriculture and forest. The proposal would involve the planting of trees on agricultural land with broadleaf planting at boundaries and scattered throughout the site and the conditioned planting of some Scots pine, a native conifer species with a lighter crown in comparison to Sitka spruce. The DAFM records that the design of the proposal helps to address concerns in relation to the landscape. It is clear that the proposal will have an impact on the local landscape but the FAC is not satisfied that this could be considered a significant effect such that an EIA might be required in this case. The FAC does not consider that the proposal could be considered to have a significant adverse impact on an area of special amenity or the landscape more generally. As noted in the record and the statement, the proposal includes setbacks from dwellings and other buildings and other features including the public road and these are conditioned on the licence through the requirement to adhere to the Environmental Requirements for Afforestation and the Forestry Standards Manual and is in keeping with good forest practice. The FAC is not satisfied that a serious or significant error was made in the making of the decision in relation to the related grounds.

In relation to the issue of traffic, the FAC noted that the site fronts onto a public road and the level of traffic generated by the project would not be greater than current agricultural practice and would be lower for a number of years. Should the landowner seek to fell trees in the future, they would require a tree felling licence and would be required to adhere to any related conditions in addition to any laws regarding the use of public roads.

In relation to consultation, the Forestry Regulations 2017 require an applicant to erect a site notice at the entrance to the lands and provides for members of the public to make submissions on an application and for the Minister to have regard to such submissions in making a decision. The record includes copies of site notices and maps indicating that the site notice was erected at the entrance to the lands and

public road. A number of submissions were made on the application and are noted in a record of the decision.

In relation to impact on receiving waters and potential sediment run off it is noted that the conditions of the licence as issued require that 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). The FAC noted that the project site is located on EPA mapping as within the River Sub-Basin Gortmore Stream (Mayo)_010. Mapping data indicates the status as good and in terms of risk is not at risk and in terms of pressures within the sub-basin forestry is not indicated as a pressure. The record shows that potential impacts on water quality were considered by the DAFM and the DAFM consider that good practice and the conditions address water quality concerns. While forestry can have an impact on water quality this is linked to specific practices and locations. The DAFM record that the proposal is not in an area designated as being potentially sensitive in relation to surface waters. The proposal is required to include an unplanted setback from the waterbody and to adhere with standards of best practice.

The Forestry Standards Manual outlines requirements in relation to the site generally and also requirements and standards in relation to biodiversity and setback distances, species, drainage and fertilisation fencing, fire and ongoing management of the forest. It is noted that these requirements would apply in relation to watercourses and the biodiversity/operation map indicates a 5 metre setback from all relevant watercourses and a 10 metre setback from aquatic zones in accordance with standards.

The waterbody to the north of the lands is recorded as being of good status and the grounds do not provide any convincing evidence that the procedure undertaken by the Minister was deficient. The FAC is not satisfied that a serious or significant error was made in the making of the decision in relation to these grounds.

In relation to biodiversity, it is noted that the site provides for 15% Areas for Biodiversity Enhancement (ABEs) comprise open spaces and retained habitat and it is also conditioned that 1000 Scots Pine are to be planted in uneven groups of 50 in the drier sections of the site which are a species which have an aesthetic value in coastal areas. In relation to the Marsh Fritillary butterfly species which was raised in the grounds of appeal the presence of this species was evaluated by an Ecologist in the assessment of the project and in relation to suitability for Marsh Fritillary is scored as unsuitable. The FAC do not consider that DAFM erred in relation to the assessment of impact on biodiversity.

In relation to pesticides and potential air pollution arising the response by DAFM is noted that in the eventuality that the application of herbicide is required, this is carried out by "spot spraying" thus not allowing any of the herbicide to become airborne and effecting air quality. The application of pesticides is also addressed in the Environmental Requirements for Afforestation and the Forestry Standards Manual. The use of pesticides in Ireland, whether in forestry or agriculture or another activity, is regulated and the granting of the licence does not remove any obligations on the landowner or their agents to adhere to the relevant regulations.

The grounds suggest that the lands are peatlands and that peatlands absorb carbon when intact but emit carbon when disturbed and that peatlands are a very important pillar of Ireland's Climate Action Plan. The lands were assessed as part of the application and DAFM process and were found, in their current state to be drained wet grassland on a peaty mineral soil currently in pasture. The DAFM record that the lands do not contain soils with a peat depth of more than 30 cm and the grounds provide no evidence to counter the record or Ecologist's assessment. While wetlands, such as intact bogs, generally function as carbon sinks, the proposal would be on lands which are not wetlands. In their current use as pasture on a drained peaty-mineral soil the lands would likely be a net emitter of greenhouse gases or to be neutral even before any emissions from ruminants or other inputs to the land associated with its current use are considered. The planting of forest on the land has the potential to reduce emissions and increase removals of greenhouse gases and the FAC does not consider that the decision is contradictory to Climate Action policies in Ireland. The FAC is not satisfied that a serious or significant error was made in the making of the decision in this matter.

In relation to impact on adjoining property including a sportsground, it is noted that a 5 metres setback is indicated along the common boundary with the sportsground, which lies mainly to the south of the proposal, and there is no evidence to indicate that the presence of forestry would present significant issues in relation to public health. An applicant is required not to plant within 60 metres of a dwelling but no dwellings are noted within this distance.

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. In accordance with Article 14B of the Agricultural Appeals Act 2001 (as amended) and based on the evidence before it, as outlined above the FAC is not satisfied that a serious or significant error, or a series of errors were made in the making of the decision CN92081, or that the decision was made without complying with fair procedures. The FAC is thus, affirming the decision of the Minister regarding licence CN92081 in accordance with Section 14B of the Agriculture Appeals Act 2001.

Yours sincerely,

Derek Daly On Behalf of the Forestry Appeals Committee