



24th May 2024

Subject: Appeal FAC 003/2023 against licence decision CN82667

Dear **

I refer to the appeal to the Forestry Appeals Committee (FAC) in relation to the above licence issued by the Minister for Agriculture, Food and Marine. 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 003/2023 was held remotely by the FAC on 5th October 2023. This hearing was adjourned and reconvened on 27th February 2024 and agreed a further adjournment. The FAC reconvened again on 18th April 2024 to consider the appeal further including additional information provided to it by the DAFM on request. In attendance for the FAC hearings in relation to this appeal were:

FAC Members: Mr. Seamus Neely (Chairperson), Mr. John Evans, Mr. Iain Douglas & Mr. Luke Sweetman.

Secretary to the FAC: Ms. Vanessa Healy.
Observer Ms. Roisin Moore (for hearing of 27th February 2024).

Decision

Having regard to the evidence before it, including the record of the decision, the notice of appeal, and submissions received, including a number of post-appeal submissions, the FAC has decided to allow the appeal and set aside the decision of the Minister for Agriculture, Food and the Marine to grant the licence CN82667. The reasons for this decision are set out hereunder.

Background

The licence decision in this case relates to an application for the afforestation of 13.34 ha at Meenymore, Co. Leitrim and was submitted on 06/11/2018. The documents for this application and appeal are not on the DAFM Forestry Licence Viewer (FLV) as the application predated same. The file documentation available to the FAC and parties to the appeal included a map which show the location of the proposal, a Bio Map and a Fencing Map. Also on file is a Pre-Approval Submission Report which shows the name of the applicant, ownership details, site details, silvicultural conditions, plot and specie details, operational proposals, fencing details, environmental considerations, and acid sensitivity test results. The Proposal is for the afforestation of 13.34 comprising six plots described as follows:

- Plot 1 GPC 3 - 3.36 ha
- Plot 2 GPC 3 - 8.54 ha
- Plot 3 GPC 8 - 0.31 ha
- Plot 4 GPC 8 - 0.37 ha
- Plot 5 GPC 3 - 0.40 ha
- Plot 6 GPC 3 - 0.36 ha

The present use of the land is described as being for agriculture. It is described as enclosed and having a soil type of mineral and peat. The site is described as exposed / moderately exposed and being at an elevation between 180m and 200m. The vegetation on site is *Grass Rush* and it is submitted that the site is not prone to flooding. Ground preparation is to include woody weed removal and mounding with slit planting proposed. 250kg/ha of granulated rock phosphate is to be applied. No drainage is required, and road access is provided. The proposal is said not to be in a Hen Harrier SPA. It is said not to be within a FWPM catchment and had no designations in the (then) County Development Plan for High Amenity Landscape or Prime Scenic considerations.

The proposal area is described as being circa 10 km east of Lough Gill (the SOF indicates that it is 4km from Lough Gill SAC) and circa 10 km west of Upper Lough Mac Nean. According to the FLV & EPA imagery, the site was bounded to the east by mature forestry, which received a clearfelling licence in February 2021. There is a substantial amount of commercial forestry in the wider landscape. The proposal is in the Owenmore (Manorhamilton)_010 Waterbody Sub-Catchment. Catchments.ie shows that the Owenmore (Manorhamilton)_010 Waterbody currently has 'Good' status (assessed by monitoring) and is described as 'Not at Risk' for the 2016-2021 period. EPA mapping does not show any relevant watercourses within the site while the Scardan River runs from southwest to northeast to the southeast of the proposal area and appears to be circa 250m distant at its nearest point.

The DAFM by letter of 09/04/2019 issued to the applicant a request for supporting documentation in the form of an archaeological assessment. An archaeological assessment of the proposal is on file bearing the date 'July 2019'. The proposal included for the planting of mainly Sitka spruce, approximately .55 ha of Downy Birch and 1.32 ha of ADB.

The appeal that is the subject of this decision letter, and now has the reference FAC 003/2023, was previously determined by the FAC and notified by letter of 14/05/2020. The said determination confirmed the decision and was challenged by way of a Judicial Review taken by the appellant, and which has resulted in the following order (dated 16/12/2022) being made by the Courts:

1. An order of Certiorari quashing the decision of the Respondent Forestry Appeals Committee to confirm the decision of the Minister for Agriculture Food and the Marine in respect of Licence CN82667 and which licence sought approval for the Afforestation of a site comprising an area of 13.34 hectares at Meenymore, County Leitrim and which approval was given on the 14th May 2020 in terms of paragraph D. 1 of the Second Amended Statement of Grounds.
2. That the First Named Respondent do pay the Applicant's costs to be adjudicated in default of agreement.
3. That he (sic) matter is to be remitted to the First Named Respondent.

The 2023 FAC number was then assigned to the appeal as a matter of convenience and to avoid any confusion between the first determination of FAC (387/2019) and the decision post-remittal (003/2023).

The file documentation was circulated to the parties by electronic means under cover of correspondence dated 24/04/2023. This correspondence notified the parties of the intention of the FAC to conduct a hearing of the appeal. Included in the correspondence to the parties was the DAFM statement (SOF) responding to the grounds of appeal, the DAFM Archaeology Response of 27/02/2023, and the DAFM file documents for Licence CN82667 - FAC 003/2023. The opportunity for parties to the appeal to make submissions to the FAC was set out in the correspondence.

Subsequent to the above, the appellant made a submission dated 06/05/2023 which made a number of observations including that the licence subject to the appeal had been previously affirmed by the FAC and that the appellant had issued Judicial Review proceedings in relation to the FAC decision to affirm (confirm) the licence. The submission set out, inter-alia, that on foot of the Judicial Review (2020/559 JR) the Court ordered the quashing the decision of the FAC, given on 14/05/2020 to confirm the decision of the Minister for Agriculture Food and the Marine, in respect of Licence CN82667 and that the matter be remitted to the FAC. The submission further set out that the appeal against licence CN82667 was made on 05/12/2019 and that as this was before the introduction of the Forestry (Miscellaneous Provisions) Act and Forestry Appeals Regulations 2020 that they (the appellant) were of the view an oral hearing of the appeal should occur.

The appellant's submission of 06/05/2023 also set out their view that the information provided in the correspondence issued to them was disjointed, lacking in order, incomplete, in places illegible, that there are blank pages where they were not sure whether there was missing information and that overall, what has been presented was incoherent as a body of information. The submission also set out their view that a single scan of the information is not an acceptable means of providing the information. The submission further set out that on that basis it was not possible for the appellant to make a full and meaningful response. The submission sought information in a legible and coherent form, and that it was unclear what

material comprises the DAFM's SOF. It also set out that the EIA Screening form provided had not been completed and, on that basis alone, the licence must be set back to the Minister. It also set out that the determination of the AA Screening for Lough Gill SAC was predicated on a fundamental mistake of fact in respect of the hydrological connection and a fundamental mistake of law in terms of the analysis of the test for the purpose of Article 6 (3) of the Habitats Directive. The submission indicated that Leitrim County Council has developed and adopted a new County Development Plan since this licence was assessed and approved.

Inspector Certification

There are two iterations of Inspector Certification on file. The first which is based on an inspection date of 26/03/2019 records answers under the headings of Inspection Details, Risk Analysis (the Indicative reason for field inspection), Environmental Reports, Silvicultural Considerations, Environmental Considerations, Operational Proposal Details, objections, referral to Prescribed Bodies, Appropriate Assessment Screening, Assessment to Determine EIA Requirement, Inspector's Certification Report and Inspector's Recommendation. The second Inspector Certification is based on an inspection date of 12/11/2019 and records answers under the same headings as in the first and as described above.

Archaeological Assessment Report (July 2019)

As alluded to earlier in this letter the DAFM by letter of 09/04/2019 issued a request for supporting documentation in the form of an archaeological assessment. An Archaeological Assessment of the proposal was submitted and while not date stamped it bears the date 'July 2019'. The said report, which was prepared by Atlantic Archaeology & Environmental Services, addresses the assessment under the headings of Introduction, Receiving Environment, Archaeological and Historical Background, Site Inspection, Summary of Results, Conclusions and Recommendations.

Referral to Prescribed Bodies

The application was referred to An Taisce and Leitrim County Council on 03/04/2019. There is no record on file of a submission having been made by An Taisce while the County Council made a response dated 09/05/2019. The Council submission set out that the Forest Service must satisfy itself as regards any requirements for Appropriate Assessment, and / or Environmental Impact Assessment Report and indicated that the Planning Authority had no objections to the proposal subject to a number of stated matters listed in the submission. It also set out requirements for any proposed forest road. The FAC notes that no forest road is proposed as part of application CN82667.

Appeal

One third party appeal was made against the decision to grant the licence. This appeal was made initially by letter dated 05/12/2019 and date stamped 06/12/2019. This was followed up with a completed Notice of Appeal Form (NOAF) which is date stamped 02/03/2020. While the appellant sought an oral hearing of

the appeal in the documentation as received on 02/03/2020 this request was deemed to be out of time as the appeal as submitted within the required timeline (in letter format) did not contain such a request. As alluded to earlier in this letter a previous decision of the FAC in relation to this licence application was challenged in court by way of Judicial Review and this challenge led to the issue of an order by the court to remit the appeal back to the FAC. The appeal documentation including the NOAF and full grounds of appeal were provided to the parties and are on file. The grounds of appeal are summarised below.

- Submission that Save Leitrim have grave concerns in relation to this proposed development and the negative impact this will have on Meenymore, setting out that it is an area which has hundreds of hectares of Sitka spruce plantations and that Meenymore is adjacent to Boleybrack SAC and Lough Gill SAC and contending that the proposal is within the referral zone for NPWS,
- Submission that Save Leitrim have concerns regarding the AA screening report contending that same should be undertaken by an Ecologist,
- Submission that Save Leitrim have grave concerns for the SACs and the damage that it contends that this application will do to the hunting grounds of the Hen Harrier which it submits the Department has a legal obligation to protect.
- Submission that these lands are HNV and rich in biodiversity and should be protected at a time when it is accepted by Government that there is a biodiversity crisis,
- Submission that if this plantation were to go ahead that it will have a negative impact on water quality in Lough Gill which is submitted as being the water source for tens of thousands of people in Sligo and North Leitrim,
- Submission that in relation to the amount of ancient Archaeology on this site and also what may be buried or depressed and what is in the surrounding areas, Save Leitrim feel that this development will add to the further destruction of heritage and contends that it will be lost forever to future generations,
- The appellants asks that this licence be cancelled for reasons set out in the grounds of appeal.

Response to Appeal from DAFM to FAC (SOF)

The DAFM made a response to the grounds of appeal (SOF) which contains information from its Administration, Inspectorate, and Archaeology units. It sets out that the application was referred to An Taisce on 03/04/2019 and that no reply was received and was referred to Leitrim Co. Council on 03/04/2019 who responded on 10/05/2019. It states that Archaeological reports were completed by a DAFM archaeologist on 19/03/2019, 08/04/2019, 19/08/2019, and 29/10/2019. It states that the application was referred to the Inspector on the 09/11/2018 and certified on the 03/04/2019 and referred again on the 20/08/2019 and certified on the 12/11/2019. It sets out that one submission was received and that the letter issued to objector on the 13/11/2019. It states that in relation to Appropriate Assessment Screening that Natura sites 1,2,3,4,5,6,7,8 were screened out and that there is no possibility of a significant effect on any Natura site and that Appropriate Assessment is not required. It states that the recommendation from the Inspector is to approve with conditions.

The SOF, inter alia, sets out that the screening (AA) was carried out as per the relevant AA screening procedure and states that based on the information on file there is no hydrological connection from the proposed project area with any of the Natura 2000 sites assessed as part of the screening process. It also sets out that the site would again be screened out for AA using the current and most up to date AA screening procedures adopted by the DAFM. In relation to specific issues raised by the appellant it states:

- 1. At the time of certification including screening for EIA & AA, the % forest cover in the Townland of Meenymore was 32%. The forest cover in the water catchment was 8%. These figures in an area of low population dominated by conventional agriculture and areas of commercial forestry are not seen as significant by the DAFM. The site is located approximately 960 m from Boleybrack Mountain SAC and 4 km from Lough Gill SAC. Based on the information on file, there is no hydrological connection from the site to either of these Natura sites. The site is in a 3km NPWS referral layer, Referral to NPWS is at the discretion of the inspector and it was not considered necessary at the time of approval.*
- 2. The AA screening is done by the DAFM forestry inspector and was carried out and completed as per relevant AA procedures using the DAFM Habitat & Bird Foraging tables as guidance. If carried out again, this site would again be screened out for AA. The DAFM and its staff must carry out their duties according to internal procedures and SOPs and this was the case here based on information on file.*
- 3. The DAFM have no record of Hen Harrier in the vicinity of this area nor is it located anywhere near a HH SPA. Given the passage of time, any records of HH outside of the SPAs are duly noted and investigated by the DAFM to ensure the protection of the species.*
- 4. The site was field inspected by the DAFM inspector and found to adhere to the requirements of the afforestation scheme. Such an assessment looks at vegetation types found on site and is to ensure it meets the criteria set out in the Land Types for Afforestation document. The document ensures that habitats of ecological and environmental importance are not approved for afforestation. Biodiversity will be enhanced by taking this land out of conventional agriculture and planting the area with trees which will include 20% native broadleaves and 15% open areas for biodiversity enhancement. The appellants have not provided any credible evidence to suggest the area is of HNV importance.*
- 5. This is a spurious allegation without any facts presented to substantiate. There is in hydrological connection to Lough Gill from this site. Even if there was a direct hydrological connection, the planting of this site as outlined in point 4 above, will remove it from conventional agriculture production. Conventional agriculture such as sheep farming common in this area, would result in animals roaming the land for up to 12 months of the year grazing the land even during winter months. Afforestation when carried out as per the required standards, including leaving open areas, setbacks and native tree planting will result in a positive contribution on water quality in the long term compared to the status quo.*
- 6. This point is addressed separately by the DAFM Archaeology Team*

The FAC understands that the correspondence referenced in the DAFM SOF at number 6 above is the letter from the DAFM Archaeologist to the Approvals Section, Forest Service, DAFM dated 27/02/2023.

This correspondence sets out as background that the file was originally referred for further advice from the DAFM archaeologist on the 09/12/2018. It sets out that, in this instance, the proposed development area is adjacent to a number of Recorded Monuments, including a cashel and souterrain (LE 012-026001/2) some 30m to the north and another cashel and souterrain (LE 012-025001/2) some 135m to the northwest. It states that following a thorough desk-based assessment of the application area, its relationship to the Recorded Monuments adjacent to it, an analysis of relevant aerial photography, historic mapping, and DAFM Archaeologist reports compiled on previous applications in the vicinity, a report containing a set of recommendations regarding the sites of archaeological and architectural concern was compiled on the 03/04/2019. It also states that during the desk-based assessment, a possible, previously unrecorded, cropmark enclosure was identified within one of the plots proposed for afforestation and that it was therefore recommended that the area containing, and adjacent to, the previously unrecorded enclosure be refused pending the submission of an 'Archaeological [Impact] Assessment'. It sets out that the assessment was to include a walk over survey by a consultant archaeologist of the area containing and in the vicinity of the cropmark enclosure identified on the aerial photography.

It also states that the application and these recommendations were then referred to the National Monuments Service (NMS) of the Department of Housing, Local Government and Housing (DHLGH), for comment/agreement, and upon receiving said agreement from NMS DHLGH, was returned to the Approvals Section in Wexford and the District Inspector for further processing. It states that the requested Archaeological [Impact] Assessment as prepared by a Consultant Archaeologist was received on the 19/08/2019 and that a set of revised conditions, accounting for the findings therein, were compiled on the 16/10/2019 and referred to NMS, DHLGH for agreement. It states that among other things, this revised report recommended that an archaeological exclusion zone / setback be established around the Recorded Monuments, the crop mark enclosure, and that all afforestation related ground preparation and drainage works in the adjacent fields to the crop mark enclosure be archaeologically monitored.

In relation to the grounds of appeal relating to archaeology, it states that having read the letters and any supporting documents submitted by the appellant, and considered the points raised therein in relation to the details of the proposed afforestation development project, specifically those points which raised archaeological concerns, it expresses a firm view that as regards protection of the archaeological resource, including the potential for further surviving subsurface structures and features, there is nothing therein that would have changed the substance of the decision made to approve the afforestation licence nor should any additional, specific, archaeological conditions have been recommended.

It states that the revised conditions, prepared by the DAFM Archaeologist, which were attached to the final approval, were compiled following receipt of a full Archaeological Impact Assessment, were informed by the assessment of an independent Consultant Archaeologist within, and were agreed by NMS, DHLGH. It states that the Appellants' reference to the risks to '*archaeology on site... and what is in the surrounding areas*' is addressed by way of the prescription of larger than standard archaeological exclusion zones / setbacks (30m+) around the Recorded Monuments, and also around the previously unrecorded / undesignated cropmark enclosure. It also states that in addition, the structured programme of

archaeological monitoring as a condition was purposefully recommended to mitigate against any potential harm to archaeology which *'may be buried or depressed'*, i.e. structures or features not having any surface expression. This condition, it states, required that the Consultant Archaeologist undertaking the archaeological monitoring be present during groundworks in the areas with the most elevated possibility of such archaeological material surviving. It also sets out that this archaeological monitoring condition is predicated on the default position that any sites or features of archaeological significance uncovered shall be preserved in situ, i.e. will not be disturbed further and will be left with appropriate unplanted setbacks and other protective measures applied, following full notifications to and consultation with the DAFM Archaeology Team, NMS, DHLGH, and the National Museum of Ireland where appropriate. It sets out that in the view of the author (of the letter of 27/02/2023) that the specific suite of archaeological conditions, which were agreed with NMS, DHLGH, mitigates sufficiently against any potential for *'the further destruction of our heritage'*, insofar as is reasonable and proportionate. It also draws attention to a typographical error in the revised archaeological conditions report in so far as a reference that a portion of the application area be refused pending assessment was a typographical error as evidenced by the reference elsewhere in the report where it is stated that the archaeological assessment had been received and the conditions attached were informed by it.

Post SOF submission (appellant)

The appellant made a submission dated 06/05/2023 following the circulation of the SOF which pointed out the following.

- That the licence was previously appealed to the FAC and that the decision of the FAC was to affirm the Minister's decision.
- That Save Leitrim issued Judicial Review proceedings against the FAC in relation to its decision and that the Court Ordered the quashing of the decision of the FAC, that the Applicant costs to be paid, and the matter is to be remitted to the FAC.
- That the appeal was made on 05/12/2019 before the introduction of the Forestry (Miscellaneous Provisions) Act and Forestry Appeals Regulations 2020 and raises issues with Item 1 of FAC admin correspondence submitting that Section 14B was inserted as amendment into the Agricultural Appeals Act post the acceptance of the appeal by the FAC.
- Contends that in remitting the matter back to the FAC, in order to achieve effective relief, the appeal should be heard consistent with the legal provisions that were in place at the time the appeal was made by SLG.
- States that at the time the appeal was made Save Leitrim was entitled to an oral hearing and now contend that SLG are entitled to an oral hearing of the appeal.
- Submits that the information provided to SLG in the correspondence is disjointed, lacking in order, incomplete, and in places illegible, there are blank pages that may be missing information and overall that what has been presented is incoherent as a body of information.
- Submits that a single scan is not an acceptable means of providing the information.
- Submits that it is not possible to make a full and meaningful response.
- Submits that it is unclear precisely what material comprises DAFM's Statement of Facts.

- Submits that the EIA Screening Form provided has not been completed and, on this basis alone, the licence must be set back to the Minister.
- Submits that the determination of the AA Screening for Lough Gill SAC is predicated on a fundamental mistake of fact in respect of the hydrological connection and a fundamental mistake of law in terms of the analysis of the test for the purpose of Article 6 (3) of the Habitats Directive.
- Points out that Leitrim County Council has developed and adopted a new County Development Plan since this licence was assessed and awarded.
- Submits that passage of time since this application was made means it needs to go back to square one.
- Submits that the licence should be set back, and the applicant advised that he can submit a new application if he so chooses.
- Submits that any new application can be assessed in light of the Department's latest procedures and Standard.

The FAC notes that there have been a number of correspondences from the appellant post the circulation of the DAFM SOF such as that received on 31/10/2023 raising matters such as;

1. *'There is no copy of our original notification of appeal form; is there a reason that this has been omitted? Can you provide a copy please,*
2. *Can you confirm the date that the AA Screening was complete,*
3. *Can you confirm which versions of the Habitats Tables and Bird Foraging Tables were used,*
4. *No In Combination assessment and statement have been provided. Is this an omission?*
5. *The EIA Screening forms are predominantly not completed, is this correct or has information not transferred with the scanning?*
6. *Can you confirm the date that the EIA Screening was completed*
7. *Queried how the record was distributed to the FAC.*

The FAC considered the contents of these correspondences and considers that these matters generally are ultimately a matter for consideration as part of the appeal rather than being addressable in piecemeal correspondence in advance of consideration by the FAC at its hearings.

Considerations of the Forestry Appeals Committee

The FAC in the first instance considered the appellant's request for an oral hearing of the appeal. Having regard to the particular circumstances of the appeal, the FAC considered that it was not necessary to conduct an oral hearing in order to properly and fairly determine the appeal. In arriving at this conclusion. The FAC noted that this appeal was made initially by letter dated 05/12/2019 and date stamped 06/12/2019 and that this appeal letter was followed up with a NOAF which is date stamped 02/03/2020. The FAC also noted that the appellant sought an oral hearing of the appeal in the documentation as received on 02/03/2020 and this request was deemed to be out of time as the appeal as submitted within the required timeline did not contain such a request.

When the FAC convened on the 05/10/2023 to consider the appeal it was decided to reissue the file documents to the parties electronically to ensure that the appellant, the applicant and the FAC had the same record available to them. The appellant corresponded with the FAC in relation to the clarity of some of the records sent electronically and queried how the record was shared with the FAC. Following this correspondence with the appellant a hard copy record was provided to the parties and the FAC to ensure that the same record was being considered by the FAC as was available to the parties to the appeal. The appellant sought extensions of time to make a submission to the FAC. The request for an extension of time by the appellant for the making of a submission to the FAC was acceded to. The latest closing date offered to the appellant by the FAC was 12/01/2024. This date was acknowledged by the appellant who indicated an intention to submit. However, no submission was received by the FAC.

The FAC further understands from correspondence submitted by the appellant that an application for information under access to information on the environment legislation was made by the appellant in relation to this application (CN82667) (AIE) AIE014/2023. The appellant in seeking an extension to the period for making a submission on this appeal to the FAC asked that such an extension would effectively allow a period after the issuing of that response (to the AIE application request) for making a submission. The FAC understands that the said AIE application was responded to prior to the Christmas 2023 break and notes that the period within which a submission would be accepted from the appellant had been extended to 12/01/2024 and notified accordingly.

Having regard to the grounds of appeal in this case including in relation to High Nature Value landscape considerations, the FAC considered the EIA screening documentation and related matters and in this context noted the references in the submission by the DAFM in the SOF relating to EIA assessment wherein it states that at the time of the EIA screening that the percentage of forest cover in the Townland of Meenymore was 32%. The FAC noted that the DAFM carried out an Assessment to Determine EIA Requirement based on an inspection date of 26/03/2019 and a further assessment based on an inspection date of 12/11/2019 (and last spatial run of the same date) and that these were in advance of making the decision to grant the licence subject of this appeal. In the assessment based on the November 2019 spatial run the Inspector recorded a consideration of the application across a range of criteria relevant to the proposed afforestation, including the existing landuse, cumulative effect (forestry), water, soil, protection of fresh water pearl mussel, archaeology, landscape, designated and non-designated habitats, social, accidents, and transfrontier, and determined that the project was not required to undergo EIA. The FAC noted that the procedure as recorded provides for further commentary to be recorded and that no commentary was entered.

The FAC noted that the EIA Determination in this case refers only to forestry projects and references a 'Last Spatial Run Date' of 12/11/2019. While the FAC would consider it reasonable that the record as a whole should be considered and that the reasons for considering that the proposal is not likely to have a significant effect on the environment might be found in separate documents, based on the foregoing it is not apparent that adequate consideration was given to cumulative effects (including non-forestry projects) when making the determination for EIA requirement. The FAC considers this to be a significant error in the processing of the application. The FAC considered the submission in the grounds of appeal

regarding Appropriate Assessment and related matters. In that context the FAC considered the record on file relating to Appropriate Assessment Screening, the latest of which is set out in the documentation described as Inspector Certification as based on the inspection date of 12/11/2019. The FAC finds that the said screening records site details, project extent, slope and vegetation on site and identifies eight European Sites within 15km of the project area as listed below.

- Arroo Mountain SAC 001403,
- Ben Bulbin, Gleniff And Glenade Complex SAC 000623,
- Boleybrack Mountain SAC 002032,
- Cuilcagh – Anierin Uplands SAC 000584,
- Glenade Lough SAC 001919,
- Lough Gill SAC 001976,
- Lough Melvin SAC 000428, and
- Sligo/Leitrim Uplands SPA 004187.

This screening examines and screens out all eight European Sites as detailed above and concludes that there is no likelihood of a significant effect on any European site, and that Appropriate Assessment is not required. The FAC notes that the reason for screening out Lough Gill SAC 001976 is stated to be;

- *'The absence of any aquatic zone within or adjoining the project area.*
- *The absence of any significant relevant watercourse(s) within or adjoining the project area'.*

The FAC also notes the content of the SOF relating to this SAC wherein it states;

'This is a spurious allegation without any facts presented to substantiate. There is in (sic) hydrological connection to Lough Gill from this site. Even if there was a direct hydrological connection, the planting of this site as outlined in point 4 above, will remove it from conventional agriculture production. Conventional agriculture such as sheep farming common in this area, would result in animals roaming the land for up to 12 months of the year grazing the land even during winter months. Afforestation when carried out as per the required standards, including leaving open areas, setbacks and native tree planting will result in a positive contribution on water quality in the long term compared to the status quo'.

The FAC considered the issue of whether a hydrological connection may exist to a European site, noting the observation by the appellant in correspondence that:

'The determination of the AA Screening for Lough Gill SAC is predicated on a fundamental mistake of fact in respect of the hydrological connection and a fundamental mistake of law in terms of the analysis of the test for the purpose of Article 6(3) of the Habitats Directive'.

In considering the issue, the FAC noted that no watercourse or aquatic zone is marked on the biodiversity and operational map as submitted by the applicant. The FAC also noted that in the *Inspector Certification*

- *Preapproval* on file, under the heading *Appropriate Assessment Screening* it is stated that the project area is “crossed by / adjoins an aquatic zone(s)”, while also not screening in any European site by reason of a hydrological connection.

In addition, the FAC observed that the report prepared by a consultant archaeologist on behalf of the applicant noted and dated July 2019, in a section entitled ‘*The receiving environment*’, observed that:

‘The Scardan river, a tributary of the Bonet, flows to the E of the site, on lower ground. An unnamed stream is located to the S’.

The FAC consider that “S” refers to the south, but that it is unclear whether the author is indicating that there is an unnamed stream located outside the site to the South or is at the south side within the site. Notwithstanding this, the FAC takes the view that the author is indicating that there is stream within the environs of the site.

The FAC consulted publicly available mapping from the EPA and observed that this shows no EPA recorded streams within or near the project site. The FAC also consulted publicly available “GeoHive” mapping from Tailte Éireann and noted that contour mapping shows the site to be in a contour between 170m above sea level (AbSL) and 190m AbSL, with the Scardan river in a contour immediately below 170m AbSL. There is a continuous slope to the northwest of the project site with the lands rising to 290m AbSL, while to the southwest of the Scardan river the lands also rise to a height of 449m AbSL at the peak of Lackagh Mountain. Together these indicate that the project site and the Scardan river lie toward the bottom of a valley through which the river flows in a northeastern direction and to which surface water from the site and surrounding lands will flow.

The Tailte Éireann mapping also shows a number of drains within the project site, although no connection to a watercourse is marked. The mapping also indicates an unnamed stream running in a roughly east-northeast direction emerging to the south of the local road from which the project site is accessed, and ca. 150m from the project site. Orthophotography provided by Tailte Éireann shows a line running in a north south direction ca. 120m to the east of a dwelling house adjacent to the project area that is indicative of a drain or managed stream which appears to pass under a farm track before entering existing forestry. The course of a possible path of this stream can be observed in the existing forestry before re-emerging to the south of the planting and north of the road mentioned above, before meandering towards the road.

The FAC also consulted publicly available mapping and orthoimagery provided by Google, in which the existing forestry can be observed to have been felled, and the line of the possible stream through the afforested area can be clearly observed before being obscured again by trees and shadow. The FAC consulted historical mapping available from Tailte Éireann, specifically the 25 inch map series. This confirms the historical presence of a watercourse following the lines referenced above, which is marked as taking a path under the road and then proceeding to the east to join the unnamed stream mentioned

above. Viewing the road on *Google Street View* using imagery obtained by Google in April of 2011, water characteristics of a small stream can be observed on both sides of this road.

The FAC consider that the above indicates a likely hydrological connection from the project site to the Scardan River, which in turn provides a hydrological connection to Lough Gill SAC at a hydrological distance of circa 5.8km. The non-identification of this potential hydrological connection between the project area and the Lough Gill SAC is considered by the FAC to be a serious error in the processing of the application CN82667.

The FAC considers 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 notes that the screening record for each of the eight European Sites examined references a separate '*in-combination assessment*' as being attached to '*this AA Screening*'. On examining the record available to the FAC no such in-combination assessment is to be found. The FAC considers that the absence of an in-combination assessment for the project is a further significant error in the processing of the application.

The FAC considered the reference in the grounds of appeal relating to the potential for the project to have a negative impact on water quality in Lough Gill which is stated to be the water source for '*tens of thousands of people in Sligo and North Leitrim*'. The FAC notes that the proposal is located circa 10 km east of Lough Gill and circa 10 km west of Upper Lough Mac Nean. The FAC finds that the proposal is located in the vicinity of the Owenmore (Manorhamilton)_010 Waterbody and that the Catchments.ie website shows the Owenmore (Manorhamilton)_010 Waterbody as having a 'Good' status (assessed by monitoring) and is described as 'Not at Risk' for the 2016-2021 period. Notwithstanding this, the FAC consider that there is a likely hydrological connection from the project site to the Scardan River and that the processing of the application by the DAFM based on the non-identification of this potential hydrological connection between the project area and the Scardan River is considered by the FAC to be a further error in the processing of the application CN82667 in so far as assessing the impact of the project on water quality is concerned.

The FAC considered the ground of appeal relating to archaeology and noted the various reports and letters from the DAFM archaeologist on the record of the file relating to this, including that an archaeological assessment of the project area was requested from the applicant as a further information request and that same was received and assessed. The FAC also noted the detailed response provided to it from the DAFM archaeologist as part of the DAFM's SOF wherein it sets out a response to the archaeology related grounds in the appeal. The FAC considers that there was a sufficient consideration of archaeological matters to inform a decision on the application and that the conditions recommended for inclusion in the licence in this regard (notwithstanding the typographical error that occurred) were adequate to deal with archaeological matters that were evident or that might arise in the course of carrying out the works in this case.

The FAC notes that the requirements for the content of an application for an afforestation licence are set out in Part 3 number 5 of S.I. No. 191/2017 - Forestry Regulations 2017 wherein it states at (2)

(2) An application for a licence in respect of afforestation shall be accompanied by—

- a) an Ordnance Survey map or other map acceptable to the Minister, with the boundary of the land to which the application relates, and all internal plots, where applicable, delineated and shall clearly show the following details—*
 - (i) public roads,*
 - (ii) forest roads,*
 - (iii) aquatic zones,*
 - (iv) wayleaves,*
 - (v) archaeological sites or features,*
 - (vi) hedgerows, and*
 - (vii) any other features which may be relevant to the application,*
- (b) a plot table, which shall accompany the map, detailing the number of each plot, the area of each plot, and the species of trees to be planted in each plot,*
- (c) the information set out in Schedule 1 or an environmental impact statement where the application involves an area of 50 hectares or more, or where the Minister has determined that an environmental impact assessment is necessary, and*
- (d) such other information that the Minister considers necessary to issue a licence or determine appropriate conditions.*

On examining the record in the case of this application (CN82667) the FAC was not in a position to satisfy itself that the requirements of Part 3 (5) (2) (b) of S.I. No 191/2017 had been met. In considering this matter, the FAC corresponded with the Forestry service DAFM by email dated 5th March 2024 the text of which is set out below.

'Dear FSU,

I refer to the above referenced appeal against licence CN82667. The FAC has most recently met on 27th February to consider this appeal. On the face of the record as has been made available to the FAC there is a document titled 'Pre-Approval Submission Report' which under the heading of Plot and Specie Details makes reference to Plots 1, 2, 3, 4, 5, and 6. It is noted that Plots 3, 4, 5, and 6 are of broadly similar size. I have been requested by the FAC to enquire if there is a map on the licence application file, as submitted by or on behalf of the applicant, that shows the plots referenced such that each plot is referenced by number and that it is clear what the area of each plot is and what the proposed species is for each plot. If there is such a map please supply a copy of same.

It is also noted that the licence as issued in the case of this application also references a digitised certified species map as being attached and which is said to set out the planting requirements for plots 1 - 6. A copy

of this map does not appear on the face of the record available to the FAC. I have been requested to enquire if there is such a map and if so can a copy of same be made available to the FAC.

I have been requested to ask that a response is made to this request within ten days of the date of this email.'

The DAFM responded to this request and supplied a copy of maps and a schedule such that would have met the requirements of Part 3 (5) (2) (b) of S.I. No 191/2017 if submitted with the application. A copy of this response as received from the DAFM was circulated to the applicant and the appellant. A period of 14 days was allowed for any submission thereon which the parties to the appeal wished to make to the FAC. No submissions were received in this connection.

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. The FAC is satisfied that a series of significant errors was made in the making of the decision CN82667. The FAC is thus, allowing the appeal and setting aside the decision of the Minister regarding licence CN82667 in accordance with Section 14B of the Agriculture Appeals Act 2001, as amended.

Yours sincerely,


Seamus Neely, On Behalf of the Forestry Appeals Committee.

