



4<sup>th</sup> September 2024

**Subject: Appeal FAC084/2023 in relation to Afforestation Licence CN91051**

Dear

I refer to your appeal to the Forestry Appeals Committee (FAC) in relation to the revocation of the above licence by the Minister for Agriculture, Food, and the Marine (the Minister). The FAC, established in accordance with Section 14A (1) of the Agriculture Appeals Act 2001, as amended, has now completed an examination of the facts and evidence provided by all parties to the appeal.

**Decision**

The FAC initially considered your appeal in a non-oral hearing on the 20/03/2024. Having regard to the particular circumstances of this case, the FAC considered that it was necessary to conduct an oral hearing in order to properly and fairly determine your appeal. An oral hearing of appeal FAC084/2023 was held remotely on the 17/04/2024 which was attended by the following participants:

**FAC Members** – Mr. Seamus Neely (Chairperson), Mr. Derek Daly, and Mr. Luke Sweetman.

**FAC Administration** – Ms. Vanessa Healy Quinn.

**Department of Agriculture, Food, and the Marine (DAFM) representatives** – Ms. Mary Coogan, Mr. Darragh Fadden, Mr. Caoimhin O’Neill, Mr. Neil O’Brien, Mr. Emmet O’Fahy.

Neither you nor your representative participated in the oral hearing.

The record of the Minister’s decision was made available to all parties by way of the DAFM’s Forestry Licence Viewer (FLV). The FAC considered all of the evidence before it, including the record of the decision, the grounds of appeal, the DAFM’s Statement of Facts (SoF), the submissions at the oral hearing, and all other submissions, before deciding to vary the Minister’s decision to revoke afforestation licence CN91051, for the reasons outlined hereunder.

**Background**

The licence under appeal was issued by the DAFM on the 02/11/2023 and is for the afforestation of lands comprising 15.44 ha with Norway spruce and additional broadleaves in the Townland of Fleanmore, Co. Limerick. The licence was then revoked on the 09/11/2023 in a letter issued by the DAFM which stated:

*In accordance with Section 7 (2) b of the Forestry Act 2014, we must now revoke the licence for the following reason: The hen harrier issue on this application was not addressed prior to the initial approval. I would like to apologise for tis (sic) error. No work can be undertaken in relation to CN91051. We will issue a new decision on the application and will advertise the decision on our website allowing for appeal to the FAC within 14 working days.*

You were also informed of your right to appeal to the FAC.

### **Grounds of Appeal and DAFM Response**

Your Notice of Appeal Form was received by the FAC on the 24/11/2024. Your grounds of appeal state that you would like to have the option to plant your land as you are 73 years old and live alone.

The DAFM provided an SoF in response to your grounds of appeal which sets out the background and the timeline to the decision under appeal and includes statements from the Forest Service Ecologist (FSE), and District Forestry Inspector (DI) involved. These statements were circulated to you for any response you may have, and no response was received. The FAC has considered the DAFM's SoF in full and the following is a summary:

- The project site is within the Article 12 Hen Harrier Breeding Distribution.
- The DI inspected the site on the 25/10/2023 and provided photographs and a description of the habitats present to the FSE which supplemented their remote inspection of the application.
- The FSE prepared an Assessment of Additional Constraints for the project on the 26/10/2023. This was subsequently reviewed by senior management and uploaded to the FLV on the 09/11/2023.
- An Appropriate Assessment Report (AAR) was completed on the 03/04/2023 and this concluded that the proposal would not result in adverse effects on the Hen Harrier, which is the Special Conservation Interest of the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA.
- Having assessed the application, the DAFM concluded that the proposal is not within the documented disturbance distance of the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA nor of the High Likelihood Nesting Area of this European site.
  - The proposal site is unsuitable for breeding and foraging Hen Harrier and is not connected to the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA to the south by traditional Hen Harrier habitat.
  - The habitats present do not correspond with the most frequently used broad habitat category for non-breeding (winter roosting) Hen Harrier.
- The project will not result in significant effects on Hen Harrier.
- The application may have been prematurely approved and subsequently revoked as a result of the communication between the FSE and the DI, the absence of potential for significant effects on the Hen Harrier, and the transition to the new forestry programme at the time.
- The implementation of the new forestry programme at the time resulted in substantial uncertainty as to how the additional environmental constraints of the application were to be considered.

### **Oral Hearing**

An oral hearing of your appeal took place on the 17/04/2024, as detailed previously in this letter. The following is a brief summary of the main points of relevance.

Following an introduction by the Chairperson the DAFM provided a background to the decision under appeal, largely reiterating their SoF.

In response to a FAC query, the DAFM stated that the decision to revoke licence CN91051 was based on instructions given in an email from a Forestry Inspector Grade I to a colleague on the administrative side on the 06/11/2023, neither of whom were participants in the oral hearing. The DAFM representatives

were unable to confirm if the option to suspend the licence instead of revoking it had been considered prior to the revocation of the licence. The DAFM stated that this email was not on the FLV but formed part of the record of the decision to revoke the licence.

The DAFM indicated that, had the licence not been appealed to the FAC, the probable outcome following the revocation of the licence would have been the re-issuing of a licence, following the completion of the Assessment of Additional Constraints.

The DAFM confirmed that the AAC had been started on the 26/10/2023 but was under review from a more senior ecologist at the time the licence was approved (02/11/2023) and was not available on the DAFM's IFORIS system until the 09/11/2023.

The hearing was closed when it was confirmed that all parties had nothing further to add.

### **Findings of the FAC**

The remit of the FAC, as set out in Section 14B of the Agriculture Appeals Act 2001, as amended, is to consider appeals against certain decisions of the Minister and to determine if a serious or significant error, or a series of errors, was made in making the decision under appeal, and if the decision was made in compliance with fair procedures. This Section also states that the FAC "shall have regard to the record of the decision the subject of the appeal". In this case, the record of the decision available to the FAC was limited to the document titled "Withdrawal of Licence" which was posted on the FLV on the 09/11/2024.

Following the oral hearing, the FAC requested that the DAFM provide a copy of the email correspondence between the Forestry Inspectorate and the Forest Service Administrator which resulted in the decision to revoke CN91051. This was provided to the FAC on the 17/04/2024 and was circulated to you on the 19/04/2024 to allow for any response you may have within a 14-day period. No response was received. In brief, the email correspondence outlines the DAFM's reasoning for revoking the licence. The FAC's understanding is that this decision was taken because the Hen Harrier issue "was not addressed" prior to the licence being approved. In determining your appeal, the FAC had regard to the requirements of Section 7(2)(b)(ii) of the Forestry Act 2014 and considered whether these requirements had been met in this case.

Section 7 of the Forestry Act 2014 states:

#### ***Granting of licences, etc. by Minister***

*7. (1) Where the Minister, following an application under the relevant statutory provisions—*

*(a) grants a licence,*

*(b) gives an approval,*

*(c) makes a grant, or*

*(d) makes an entry in a register,*

*he or she may grant, give or make it, as appropriate, with or without conditions.*

*(2) Where a matter to which subsection (1) relates has been granted, given or made, the Minister may where appropriate, in whole or in part, subsequently—*

*(a) vary any conditions, or*

*(b) suspend or revoke the licence, approval or grant, or remove the entry,*

*having regard to all the circumstances of the case, including non-compliance with any conditions, but a revocation of a licence or of another foregoing matter shall not take place unless the Minister is satisfied that—*

*(i) there are substantial grounds warranting that course of action, and*

*(ii) the exercise of none of the other powers under this subsection would remedy the matter.*

In the FAC's understanding, Section 7(2)(b)(ii) means, *inter alia*, that the Minister shall not revoke a licence unless the matter at hand could not be remedied by either varying the licence conditions or suspending the licence. In the particular circumstances of your case, the FAC has formed the view that the Minister could have suspended your licence until such a time as the Assessment of Additional Constraints in relation to the Hen Harrier had been completed. The completion of this assessment could then have informed the DAFM's decision to either revoke the licence or remove the suspension. As such, the FAC finds that the DAFM made a significant error in revoking CN91051 and their decision was not in line with the requirements of Section 7(2)(b)(ii) of the Forestry Act. In these circumstances, the FAC decided to vary the Minister's decision to revoke CN91051 and instead to suspend the licence, to allow for the DAFM to complete their consideration of the Assessment of Additional Constraints for Hen Harrier before deciding whether to remove the suspension or to proceed to revoke the licence.

Yours sincerely,

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Luke Sweetman on behalf of the Forestry Appeals Committee