



13th May 2025.

Subject: FAC Ref No 140/2024 regarding CN86156

Dear

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

Hearing and Decision

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 140/2024 was held remotely by the FAC on 15th April 2025.

In attendance:

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

Secretary to the FAC: Ms. Aedin Doran.

Having regard to the evidence before it, including the record of the decision, the notice of appeal, and submissions received, the Forestry Appeals Committee (FAC) has decided to set aside and remit the decision of the Minister for Agriculture, Food and the Marine to grant the licence CN86156. The reasons for this decision are set out hereunder.

Background

An application for a licence was submitted and a licence (CN86156) for an approved afforestation of c.7.2 hectares at Ahane Beg, County Cork was issued by the DAFM on the 27th November 2024.

The project as initially submitted involved the afforestation of 13.76 hectares on five plots and 250 metres of fencing. Species planting is predominantly Sitka spruce with also the planting of additional Broadleaf species. The project area is described as consisting of primarily wet grassland (GS4), with some flushed heathland (HH3/PF2) habitat also present. Hedgerow (WL1) and drainage ditches (FW4) occur along some field boundaries, with notably a tributary watercourse (FW1) of the Blackwater River (SAC) flowing from 300m upstream, along the proposed afforestation's western boundary. The land is

described as relatively flat. The underlying soil is predominantly mineral on bedrock of shale and sandstone. There is a flushed peat element present within the northern portion of the site.

The project site is located on EPA mapping as within the River Sub-Basin BLACKWATER (MUNSTER)_060. Mapping data indicates the status as good and in terms of risk is at risk. Forestry is indicated on EPA data as a pressure within the river sub basin.

Applicant Documentation

Documentation submitted included mapping, public notices, a Natura Impact Statement (NIS) with a completion date of 17/06/2020 marked as uploaded on the FLV on the 19th August 2020. The NIS identifies the Blackwater River (Cork/Waterford) SAC (code 2170) where there is a possibility of the project having an effect, either alone or in combination with other plans & projects, on this Natura site. Mitigation measures are proposed in the NIS.

Following initial assessment of the project the northern area of the site was excluded, due to wet heath habitat and an inability to adequately lower the water table without connecting the new drainage directly to the existing watercourses. Revised species mapping reflecting this was submitted on the 13/12/2023 reducing the planted area to a stated 7.79 hectares.

DAFM Assessment

DAFM documentation states the date of application published as the 26/03/2020, the date of publication of application for 1st Public Consultation as the 14/04/2020 and date advertised for 2nd Public Consultation as the 23/07/2021.

There is an Appropriate Assessment Screening Report (AASRD) dated 05/03/2023 on file as carried out by a consultant ecologist and referred to as AA Screening Determination on the FLV. It examines five European sites and screens in the Blackwater River (Cork/Waterford) SAC IE0002170. Four sites were screened out: the Killarney National Park, Macgillicuddy's Reeks And Caragh River Catchment SAC IE0000365; the Mullaghanish to Musheramore Mountains SPA IE0004162; the Stack's to Mullaghareirk Mountains and the West Limerick Hills and Mount Eagle SPA IE0004161. Reasons are provided for the screening conclusions reached for each of the European Sites examined.

An Appropriate Assessment Screening Report Appendix A: In-combination report for Afforestation project CN86156, which is itself undated, is on file and is marked as uploaded on the FLV on the 18/12/2024. It is referred to on the FLV as in-combination screening stage. It refers to various online resources, datasets and DAFM's own databases that were consulted on the 05/03/2024 in order to identify other plans and projects which are also located in the general vicinity of the project area in the River Sub-Basin BLACKWATER (MUNSTER)_060. This In-Combination report included a Statement which concluded;

'that there is no likelihood of the proposed Afforestation project CN86156, when considered individually, having a significant effect on the relevant European Site(s), as described elsewhere in the Screening

Report. There is no likelihood of residual effects that might arise from this project, which are not significant in themselves, creating a significant effect in-combination with other plans and projects. The relevant Qualifying Interests / Special Conservation Interests and Conservation Objectives, as listed elsewhere in the Screening Report, have been taken into consideration in reaching these conclusions.

Furthermore, it is considered that the regulatory systems in place for the approval, operation (including any permitted emissions) and monitoring of the effects of other plans and projects are such that they will ensure that they do not have any significant effect on those same European Site(s). There is no likelihood that the proposed project will have, or contribute to, any significant effect on those same European Site(s), when considered in combination with other plans and projects’.

An Appropriate Assessment Determination (AAD) dated 10/10/2024 prepared by a consultant ecologist on behalf of the Minister for Agriculture, Food and the Marine and marked as uploaded to the FLV on the 27/11/ 2024 outlines mitigation measures in section 4. The basis for this AA Determination is stated to be as follows;

‘The proposed project is not located within Blackwater River (Cork/Waterford) SAC IE0002170 but is hydrologically connected to this European site. However, the details of the proposed works and mitigations described above will ensure that the project will not adversely affect the integrity of this European site. These details will protect water quality and riparian areas/etc. and, as such, protect aquatic qualifying interests and (e.g. supporting habitats and/or species of terrestrial qualifying interests).

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’

An Appropriate Assessment Report Appendix A: In-combination report for Afforestation project CN86156 is on file, which is itself undated, and is marked as uploaded on the FLV on the 27/11/2024. It refers to various online resources, datasets and DAFM's own databases that were consulted on the 10/10/2024 in order to identify other plans and projects which are also located in the general vicinity of the project area in the River Sub-Basin BLACKWATER (MUNSTER)_060. It contains an In-Combination Statement relating to the screened-in European site which concluded;

‘that there is no possibility that the Afforestation project CN86156, with the mitigation measures set out in Section 4, will itself, i.e. individually, adversely affect the integrity of those European Site(s) screened in

(as listed elsewhere in this AA Report. The relevant Qualifying Interests / Special Conservation Interests and Conservation Objectives have been considered in reaching this conclusion. There is no likelihood of any residual effects that might arise, which do not in themselves have an adverse effect, creating an adverse effect on the integrity of the site(s) 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 other plans and projects are such that they will ensure that those plans and projects do not give rise to any adverse effect on the integrity of those same European Sites. It is concluded that this project, when considered in combination with other plans and projects, will not adversely affect the integrity of those same European Site(s). Note that this relates to the proposed activities under CN86156 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 DAFM carried out an Assessment to Determine EIA Requirement bearing the date 27/11/2024 and is marked as certified on 27/11/2024, in advance of making the decision to grant the licence subject of this appeal. In this assessment the Inspector recorded a consideration of the application across a range of criteria relevant to the proposed afforestation, including water, soil, designated areas, landscape, amenity and recreation, Transfrontier, cumulative effects and referrals and submissions and determined that the project was not required to undergo EIA. The assessment notes that the project area within the sub-basin of a waterbody where forestry is characterised as a pressure by the EPA (alone or alongside other pressures) and a short summary of the issues raised within the referral responses which are addressed via adherence to the Forestry Standards Manual procedures and Environmental requirements for afforestation.

An Inspector's Certification Report dated 21/11/2024 and certified on 27/11/2024, recommends permission subject to conditions.

A DAFM Forestry Inspectorate High Nature Value farmland Assessment Report is on file which and states that project CN86156 was field inspected on 26/10/2023 and desk assessed 21/12/2023 to score the site in relation to High Nature Value Farmland (HNVf). It also states that following assessment, this application has scored Moderate for HNVf as documented in the report. The report concluded that *'the majority of the application site is improved agricultural grassland with low species diversity. The site is not considered to be High Nature Value Farmland'*.

A DAFM Archaeology report dated 06/06/2020 indicated no objections.

Referrals

The FAC noted, based on documentation submitted, that the application was referred to SW Regional Fisheries Board who in a response dated the 30/04/ 2020 indicated that Inland Fisheries Ireland (IFI) has no objections to the proposed development providing forestry establishment is in compliance with the Forestry and Water Quality Guidelines for non-sensitive waters and conditions to be included in any approval.

There was also a referral to the National Parks and Wildlife Service (NPWS) on the 14/05/2020 who in a response dated the 19/05/2020 referred to the River Blackwater SAC, to the issue of FPM and recommended a screening report to undertaken to ascertain whether AA is relevant.

Decision

The decision to approve and the licence for an approved area of 7.2 hectares was issued on the 27/11/2024 and is marked as uploaded to FLV on the same date.

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. The Notice of the appeal and full grounds of the appeal were provided to the relevant parties. In summary, the grounds refer to;

- The site being elevated above (the appellant's) farmyard.
- That the culvert taking water from the project site is blocked and requires to be cleaned out and deepened.
- Concern relating to the future of the appellant's dairy enterprise.

DAFM Statement (SOF) to the FAC

A Statement of Fact (SOF) was received by the FAC from the DAFM and was provided to the parties. In summary, the SOF 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.

The SOF also refers to;

- The chronology of the licence application in relation to public notices, the date the application was made and public consultation in relation to assessing the project, the assessment of the licence application; referrals to the appropriate prescribed bodies that it was assessed under the procedures and guidelines associated with the new 2023-2027, Forestry Programme afforestation scheme;
- The SOF also indicates that the northern area of the site was excluded, due to wet heath habitat and an inability to adequately lower the water table without connecting the new drainage directly to the existing watercourses and a revised species map was submitted on the 13/12/2023.
- Reference is made to the AA process conducted, the completion of the Appropriate Assessment Determination. Based upon the inspection of the application documents, field inspections, the response from the prescribed referral bodies, appropriate assessment determination mitigation measures, consideration of the submissions from members of the public and that the inspector recommended that the application be 'approved with conditions.' These conditions are asserted as addressing the points raised in the various submissions and that the approval met the requirements of the afforestation scheme and good forest practice.

Specifically in relation to the grounds of appeal as submitted the SOF also indicates;

- Reference is made to the conditions of the licence and the requirements in relation to protection of water contained in the conditions including an undisturbed 20 metres setback is specified for the aquatic zone and an undisturbed 5 metres setback is specified for the relevant watercourses (the existing man-made field drains). Leaving the existing relevant watercourses in an undisturbed state and not cleaning them out, together with the undisturbed setbacks along the aquatic zones and existing field drains should result in no change to the drainage status of the site and potential impacts on adjoining lands.

Consideration of FAC

As alluded to earlier in this letter and 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. The remit of the FAC, as set out in Section 14B of the Agriculture Appeals Act 2001, as amended, is to consider appeals against specified decisions of the Minister for Agriculture, Food, and the Marine, 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.

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 notice of appeal, and the statement provided by the DAFM.

The grounds of appeal express a number of concerns primarily in relation to the issue of impact on the appellant's property, land and dairy enterprise arising from water entering his lands as the project site is elevated above his farmyard and that the culvert taking water from the project site is blocked and requires to be cleaned out and deepened.

In making a decision on the proposed afforestation, 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 likelihood of 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 the likelihood of significant effects on the environment which may arise from a proposal and whether an Environmental Impact Assessment is required.

The FAC noted that DAFM carried out an Assessment to Determine EIA Requirement bearing the date 27/11/2024 and marked as certified on 21/11/2024, in advance of making the decision to grant the licence subject of this appeal. In this assessment the Inspector recorded a consideration of the application across a range of criteria relevant to the proposed afforestation, including water, soil,

designated areas, landscape, amenity and recreation, Transfrontier, cumulative effects and referrals and submissions received and determined that the project was not required to undergo EIA.

In relation to the Assessment to Determine EIA Requirement to be found on the file for this licence decision the FAC finds that the DAFM recorded a consideration of the application across a range of criteria relevant to the proposed afforestation and determined that the project was not required to undergo EIA. However, in reaching a decision not to undertake an EIA the Minister was required to consider potential cumulative effects with other plans and projects. The document prepared by the DAFM only refers to forest cover and other forestry projects. There is no indication on the record of the decision that potential cumulative effects with non-forestry projects were considered which would constitute a further error in the processing of the application.

In relation to Appropriate Assessment, the FAC finds that the DAFM, in its processing of the application which led to the decision subject of this appeal (FAC 140/2024), carried out a fresh Appropriate Assessment screening of the proposal under Article 6(3) of the EU Habitats Directive. Accordingly, the FAC considered if the procedures leading to the making of the decision to grant the licence for the proposed development were consistent with the Habitats Directives. The FAC finds that the DAFM prepared the following documents / reports.

- An Appropriate Assessment Screening Report (AASRD) dated 05/03/2023 carried out by a consultant ecologist.
- An Appropriate Assessment Screening Report Appendix A: In-combination report for Afforestation project CN86156 which is undated and refers to various online resources, datasets and DAFM's own databases that were consulted on the 05/03/2024 in order to identify other plans and projects which are also located in the general vicinity of the project area in the River Sub-Basin BLACKWATER (MUNSTER)_060.
- An Appropriate Assessment Determination (AAD) dated 10/10/2024 which is marked as uploaded to the FLV on the 27/11/2024.
- An Appropriate Assessment Report Appendix A: In-combination report for Forest afforestation project CN86156 and dated 10/10/2024.

It is noted by the FAC that the In-combination report (screening stage) which deals with the screened-out sites contains the following as part of its conclusion *'There is no likelihood of residual effects that might arise from this project, which are not significant in themselves, creating a significant effect in-combination with other plans and projects'*

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 an Appropriate Assessment of the implications of the project and such effects on the European site, having regard to the conservation objectives of the sites concerned. It appears to the FAC that it is not clear that the wording in the In-combination statement relating to the screened out sites

demonstrates that the potential for significant effects to arise from the proposal in-combination with other plans and projects was considered by the DAFM as the wording refers to consideration on the basis that there is no likelihood of 'residual effect(s)' that might arise, which are not significant in themselves, creating a significant effect in combination with other plans and projects.

In the FAC's view, the reference to 'residual effects' in the In-Combination report / assessment on file that deals with the screened-out sites, creates confusion as it is not clear what effects are being referred to in this instance and there is no explanation as to what gives rise to these effects such that they can be described as being 'residual'.

The FAC would understand that the term residual is generally used in the context of what remains after an action is undertaken. In the context of Appropriate Assessment (AA) the term 'residual effects' is more commonly employed in relation to the consideration of what effects remain after mitigation measures have been assessed as part of the AA. For example, the Department of the Environment, Heritage and Local Government published a guidance document on Appropriate Assessment entitled Appropriate Assessment of Plans and Projects in Ireland Guidance for Planning Authorities (DEHLG, 2009). This document states on page 40,

'If the competent authority considers that residual adverse effects remain, then the plan or project may not proceed without continuing to stage 3 of the AA process: Alternative Solutions'.

The FAC considers that this represents a significant error in the processing of the application and that in the context of undertaking the screening again the Minister should correct this language to avoid the introduction of any unnecessary confusion.

The FAC also finds that the Appropriate Assessment Report Appendix A: In-combination report for Forest afforestation project CN86156 as dated 10/10/2024 is referenced as an Appendix to an Appropriate Assessment Report. The FAC finds that there is no such report in the documentation available or published on the FLV and which does not appear on the record of the face of the record as made available to the FAC. The FAC concluded that it is a significant error to rely on a document in the processing of this afforestation licencing application which is not to be found on the record of the file. The FAC also finds that this In-Combination report refers to the Cork County Development Plan 2014 being consulted. The FAC noted that the Cork County Development Plan 2022-2028 came into effect on 06/06/2022 and was the statutory development plan at the time the In-Combination assessment was completed and that this represents a further serious error in the processing of the application.

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 four sites were screened out and subsequently an AAD was carried out with an overall conclusion of no likelihood of an adverse effect on any European site.

The FAC noted that the proposed project 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 initial screening are the only sites within a 15Km threshold distance for impacts to Natura 2000 sites and were subjected to the Appropriate Assessment process in relation to the potential impacts of the likely significant effects of Afforestation project CN86156.

In relation to the chronological assessment of AA, the FAC noted that the applicant submitted a NIS, that DAFM prepared an Appropriate Assessment Screening Report (AASRD) dated 05/03/2023 which references the submitted NIS, a Appropriate Assessment Determination (AAD) dated 10/10/2024 which refers to screening for Appropriate Assessment and that the applicant submitted a Natura Impact Statement (dated 19/08/2020) to facilitate the Minister carrying out an appropriate assessment and also outlines documentation and material taken into account including the NIS and the AA Screening Report and Determination for this project, and that an in-combination report was considered to ensure that conclusions reached regarding European sites remain accurate.

Specifically, in relation to in-combination there are two in-combination reports for Forest afforestation project CN86156 on file which are undated; an Appropriate Assessment Screening Report Appendix A: In-combination report for Afforestation project CN86156 in which various online resources, datasets and DAFM's own databases were consulted on the 05/03/2024 and an Appropriate Assessment Report Appendix A: In-combination report for Afforestation project CN86156 in which various online resources, datasets and DAFM's own databases were consulted on the 10/10/2024.

It is noted by the FAC that one of the In-combination reports refers to an Appropriate Assessment Report. As has been noted previously in this letter the FAC finds no record of an Appropriate Assessment Report in the documentation available to it as published on the FLV. The In-Combination report is described as an appendix to an AAR that does not exist in the public record. It appears that the AASRD and AAD relied on the submitted NIS and also that the AAD considered a revised reduced area which post-dated the NIS even though the initial proposed project considered in the NIS comprised an area of 13.76 hectares. The FAC considered that the absence of an Appropriate Assessment Report that related to the project in its amended form (reduced area of planting) constituted a serious error in the processing of the application. The FAC also considered that it is a further error in the processing of the application to rely on an appendix to an AAR that does not appear on the record of the application. The FAC further considered that there is an absence of a clear chronological and reasoned rationale post AASRD for the conclusion outlined and for the basis for the AAD and therefore for the mitigation measures outlined in the AAD.

Specifically in relation to the grounds of appeal these express a number of concerns primarily in relation to the issue of impact on the appellant's property, land and dairy enterprise arising from water entering his lands as the project site is elevated above his farmyard and that the culvert taking water from the project site is blocked and requires to be cleaned out and deepened.

The FAC noted these matters were considered as part of the application process and that there are specific measures set out in the Environmental Requirements for Afforestation and the Forestry Standards Manual in relation to drainage and water setbacks and there are numerous mitigation measures in the AA Determination (adherence to which is a condition of the licence) which serve to protect water quality and restrict the drainage works on site. These include a requirement that water setbacks remain undisturbed and unplanted and that drains on site must not connect to any existing aquatic zone or relevant watercourse. The FAC considers that these conditions will act to retain the current drainage status of the site and mitigate against potential impacts on adjoining lands. This approach is considered reasonable in the interest of protecting water quality and the hydrology of the site. The FAC concluded that the DAFM has not erred in its processing of the application in so far as these grounds of appeal are concerned.

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal and submissions received. The FAC is satisfied that a serious error or a series of errors were made in the making of the decision in this case. The FAC is, thus, setting aside and remitting the decision of the Minister regarding licence CN86156 in accordance with Section 14B of the Agriculture Appeals Act 2001, as amended, to undertake a new Appropriate Assessment screening of the proposal itself and in combination with other plans or projects under Article 6(3) of the EU Habitats Directive and to also undertake a new Assessment to Determine EIA Requirement, in keeping with the requirements of the EU EIA Directive and the Forestry Regulations 2017 prior to the making of a new decision.

Yours sincerely,



Derek Daly On Behalf of the Forestry Appeals Committee