



30 December 2020

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**Subject:** Appeal 061/2019 regarding licence CN82221

Dear [REDACTED]

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

#### **Background**

Licence CN82221 for afforestation on a stated site of 5.1ha at Kiltyclogher, County Leitrim was issued by the Department of Agriculture Food and the Marine (DAFM) on 27 February 2020.

#### **Hearing**

An oral hearing of appeal 061/2019 was conducted by the FAC on 08 December 2020.

Attendees:

FAC:	Mr Des Johnson (Chairperson), Mr Luke Sweetman, Ms Paula Lynch & Mr Pat Coman
Secretary to the FAC:	Mr Michael Ryan
Appellant:	[REDACTED]
Applicant representative:	[REDACTED]
DAFM:	Mr Martin Regan

#### **Decision**

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notice of appeal, a consultant's report and any submissions received and, in particular, the following considerations, the FAC has decided to set aside and remit the decision of the Minister for Agriculture, Food and the Marine regarding licence CN82221.

The licence is for afforestation on a stated site of 5.1ha, comprised in two plots, and involves a change of land use from agriculture to forestry. Proposed planting will be 85% Sitka Spruce and 15% additional broadleaves. Soils are described as mineral peat and the proposal elevation is between 100m and 140m. The site comprises enclosed land, that is exposed/moderately exposed in grass/rush with a north east

aspect. Both plots are within the Erne Catchment, the smaller plot is in the Drowes\_SC\_10 sub-catchment and the larger is in the Mcneanloughsconnector\_SC\_10 sub-catchment. The larger plot 2 has a watercourse along its northeast boundary that flows to the southeast to the Teamore River, there is a minor lake just north of the plot at circa 150m with no downstream connection from the proposal. The smaller plot 1 is a short distance from the Kilcoo River. Ground preparation is given as by mounding, there would be angle notch planting, and drainage is stated as required. Fertiliser is 250kg/ha of granulated rock phosphate and there would be manual herbicide applications in years 0, 1 and 2. There are no firebreaks and the site has road access. At application processing stage a bio-plot was excluded as the plot was not integral to the lands proposed for planting.

The application was subject of a desk assessment by the DAFM. The DAFM referred the application to Leitrim County Council and in response the Council stated the lands are considered high capacity / low sensitivity for forestry and sought to be contacted regards public roads before commencing works.

The DAFM carried out a screening for Appropriate Assessment using what were its standard operating procedures at the time and screened out the proposal as not within 3km of a Natura Site, not having a direct hydrological connection to such a Natura Site and not being within a Freshwater Pearl Mussel catchment.

The licence CN82221 was issued with the conditions to adhere to forestry and water quality guidelines and all guidelines to apply.

There is a single appeal against the decision to grant the licence. The grounds of appeal are summarised as follows;

- Concern for the negative impact on the local community as a result of decades of afforestation.
- The local primary school was threatened with closure.
- People don't live in this area because of conifers
- The area is already densely forested with a monoculture crop
- The Forestry Service (FS) and Government policy have done irreparable damage to the community.
- Social impacts of blanket afforestation in this region are not being taken into account
- The lands are of High Nature Value (HNV) with rich biodiversity. The FS have a legal obligation and commitment not to plant such areas. Some of these lands are rich traditional old meadows
- There is a stream running along the boundary of the lands and many drains feed into it.
- This stream flows into Kiltyclogher Lough which is well known for its HNV and biodiversity.
- Concern that an ecologist opinion may not have been sought.

In response to the appeal the DAFM stated that a desk audit was carried out and the DAFM are satisfied all criteria was adhered to.

The FAC requested further information from the DAFM, vis;

1. Please provide details of any plans or projects or both which, when assessed in combination with the proposed development, is/are likely to give rise to a significant effect or effects on a European Site in view of that site's conservation objectives. Please state what plans and projects have been considered in making the determination in relation to the in-combination effects, and submit the assessment on these.

2. Please state if, in carrying out a screening assessment in respect of the proposed development by the Department, any consideration was given to any mitigation measures proposed to avoid or reduce the likely effects of the proposed development on the environment. If any mitigation measures were considered in the screening assessment undertaken these should be identified in your response to this request.

The DAFM reply, as circulated, stated that the proposed development on its own was determined to not be capable of giving rise to a significant effect or effects on the integrity of any Natura 2000 sites in view of those sites' conservation objectives, because of a lack of hydrological connection to Natura sites. The DAFM also submitted an in-combination screening of the proposal in respect of other plans and projects that is dated 16 March 2020 per the document content.

At the oral hearing the DAFM stated that the proposed application had been desk assessed and submissions from third parties were received and considered before the decision to issue the licence was made. The DAFM confirmed flooding was examined for an incidence rate of 1 year in 100 was noted. The DAFM stated that there was road access to the proposal for the purposes of licencing and issues with regards right of way may be legal issues between the parties. The Appropriate Assessment screening process adopted at the time was used, screening European Sites within a radius of 3 km from the proposal and there were none within that distance. The DAFM stated afforested areas in the locality are checked for at processing and while it did not have a cut-off figure for cumulative afforestation, the areas with a higher percentage cover are looked at more carefully. The DAFM confirmed the in-combination assessment was completed on a date after the licence had issued. The Appellant stated the land of the proposal has no public road access, instead the access was a private lane of 2.5m width and was a cul-de-sac, there are poor sightlines of less than 30m, where a sightline of 160m is required and can be reduced to 70m where justified. There is also a steep fall from the road and exiting would be difficult for traffic involved in the proposal. The local road is sub-standard. Also, there is a Cycle Route along the regional road, and it is unsuitable for the traffic caused by the proposal. The Appellant stated that since 2016 (centenary) there has been a huge increase in visitors to the Seán Mac Diarmada cottage along this route using what is a very narrow road including school tours. In addition, there is a connected stream flowing into Northern Ireland from the proposal and there was no consultation with the Northern Ireland authorities, also the National Parks and Wildlife Service (NPWS) was not notified and it was questionable how the site was screened out for Appropriate Assessment. The Appellant stated there were errors on the application bio-map regards wire fences being marked as hedgerows. The Appellant clarified their use of 'Kiltyclogher' Lough in the appeal was based on the townland name. The Appellant stated there has been no EIA whereas there are c. 320 ha planted per the approval and there are also potential cumulative impacts on Lough Melvin. The Applicant's representative stated the applicant has a right of way and access and the roadway is upgraded by the County Council, there is already access to forestry next door to this

relatively minor proposal. The Applicant wishes to plant part of his land so as to retain it for income purposes. The proposal soils are Gleys and not Peat soils, there will be no new drains installed, there is a 10m setback to watercourses and there will only be native trees planted by setbacks. The land does not contain Molinia and is all grass or grass/rush.

In addressing the issues raised in the written and oral submissions by the Appellant, the FAC considered that a number of these related to policy matters. The FAC may have regard to such policy matters in determining appeals coming before it but is not a policy making body in respect of forestry or competing land uses.

The FAC examined the procedures followed by the DAFM before concluding that EIA is not required in this case. The proposal is for afforestation of 5.1 ha and is significantly sub-threshold for mandatory EIA under the Irish Regulations which sets a threshold for such mandatory assessment at 50 ha. The FAC is satisfied that the DAFM had adequate information before it in respect of the characteristics of the proposed development, the location and the type and characteristics of potential impact arising from the proposed development, to enable a preliminary screening for EIA. In this regard, the FAC noted the detailed information submitted describing the proposed development, including planting methods, submitted information relating to the location, forestry coverage in the townland at the time and in the underlying waterbody in advance of the making of the decision. Based on the information before it, the FAC considers that there is no convincing evidence before it to indicate that procedures followed by the DAFM in the preliminary screening were flawed and the FAC is satisfied the conclusion that EIA is not required is correct.

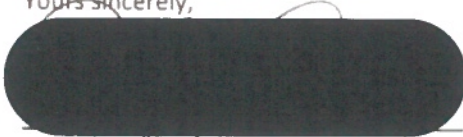
The Appellant raised concerns with regard the Appropriate Assessment screening. In considering the appeal the FAC noted there are eight European Sites within a 15km radius of the proposal, and none were included for in the DAFM's screening of the proposal for Appropriate Assessment. These Natura Sites are as follows; Boleybrack Mountains SAC (c. 6.9 km), Lough Gill SAC (c. 7.1 km), Lough Melvin SAC (c. 7.3 km), Arroo Mountain SAC (c. 8.7 km), Corratirrim SAC (c. 11.1 km), Cuilcagh-Anierin Uplands SAC (c. 14.7 km), West Fermanagh Scarplands SAC (C. 7.7 km) and Lough Melvin SAC (c. 7.5 km). The proximate Kilcoo River has a c. 8.5 km downstream connection via the Rosfriar river to Lough Melvin. In addition to the foregoing there is no in-combination assessment provided for consideration. The FAC considers the Appropriate Assessment screening is not sufficient in this instance and the requirements of Article 6(3) of the Habitat's Directive need to be further addressed at least having regard to the aforementioned.

The Appellant contended that referrals should have been made to the NPWS and to the Northern Ireland authorities for observations. In this matter the FAC notes plot 2 of the proposal has a hydrological connection via the Teamore River to Upper Lough MacNean (a pNHA), however, the proposal is not within or adjacent to any European or Nationally designated site. Having regard to the nature and scale of the proposed development and the characteristics of the receiving environment, the FAC considers that the DAFM properly exercised its discretion in respect of referrals.

Regards the grounds contending the proposal lands are High Nature Farmland and that the DAFM have a legal obligation not to afforest such land, in this matter the proposal site is not shown to be a designated site and the FAC has no role regards State aid provisions.

In the circumstances outlined above, the FAC concludes that the Appropriate Assessment screening did not take account of the Natura sites outlined in the broader area and there is no assessment for in-combination effects from the proposal with other plans and projects before the decision to grant the licence was made and the failure to do so represents a significant error in the DAFM's processing of this licence application. Therefore, the FAC concludes that the decision of the DAFM should be set aside and remitted to the Minister to carry out a new screening for Appropriate Assessment of the proposed development on its own and in combination with other plans and projects, before making a new decision.

Yours sincerely,



Pat Coman, on behalf of the Forestry Appeals Committee