



[REDACTED]

28<sup>th</sup> September 2021

**Subject:** Appeal FAC 001/2021 in relation to licence CN82565

Dear [REDACTED]

I refer to an appeal made to the Forestry Appeals Committee (FAC) in relation to this decision by the Minister for Agriculture, Food and the Marine (DAFM). 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 the parties to the appeal.

#### **Background**

Licence CN82565 for afforestation of 4.15 hectares(ha) at Doonwood, Co. Galway was granted by the DAFM on 10<sup>th</sup> December 2020.

#### **Hearing**

A hearing of appeal FAC 001/2021 was held by a division of the FAC on 23<sup>rd</sup> August 2021. In attendance: FAC Members: Mr. Myles Mac Donncadha (Chairperson), Mr. John Evans, Mr. Derek Daly and Mr. James Conway

#### **Decision**

Having regard to the evidence before it, including the record of the decision by the DAFM, the notice of appeal, and all submissions received, the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister to grant this licence CN82565.

#### **Additional Background**

The licence pertains to afforestation of one block of enclosed land of 4.15ha, with species proposed as Sitka Spruce (85%) and Additional Broadleaves (15%). The proposal included ground preparation of woody weed removal and mounding and the planting method to be slit planting. Fertiliser of 250kg Granulated Rock Phosphate per hectare was proposed with herbicide control proposed in years 0, 1, 2 and 3.

The proposal was originally for 14.23 hectares in one block of land and was subsequently reduced to 13 hectares when plot 5 was removed because it was deemed unplantable due to the requirement for a fire break and aquatic zone setbacks which, in combination with the presence of unplantable land, would have reduced the plantable area to less than the allowed minimum of 15m in width. Plot 2 (1.02 ha) was proposed to be planted with Birch. Soil type was submitted to be mineral, peat. Drainage was proposed. The 4.15 hectares approved represents the western part of the submitted plot 1.

The proposal area is proximate to Mountbellew, lying to the south west of it. It is within the Upper Shannon (26D) WFD Catchment, Castlegar\_SC\_010 and Castlegar\_010 River Sub Basin. The Castlegar\_010 has a moderate WFD status (2013-2018), with agriculture listed as a pressure.

The DAFM referred the application externally to Galway County Council, but no reply is on file. The application was referred internally in the DAFM to an Ecologist, who visited the site along with the Forestry Inspector. The Forestry Inspector visited the site prior to this on his own and on another occasion with the Divisional Inspector.

Various versions of the DAFM's Inspector Certification document are on file reflecting the ongoing processing of the application, the final version of which described the site details as:

*"This project comprises 4.2 hectares of afforestation, the predominant soil type underlining the project area is predominantly podzols in nature, the slope is predominantly flat to moderate (<15%), the project area is crossed by / adjoins an aquatic zone(s), the vegetation type(s) within the project area comprise grass and rush and balance of area applied for excluded."*

The DAFM undertook a stage 1 Appropriate Assessment screening in relation to the provisions of the Habitats Directive, and found ten European sites (Camderry Bog SAC 002347, Carrownagappul Bog SAC 001242, Curraghleanagh Bog SAC 002350, Derrinlough (Cloonkeenleananode) Bog SAC 002197, Levally Lough SAC 000295, Lough Corrib SAC 000297, Lough Lurgeen Bog/Glenamaddy Turlough SAC 000301, Monivea Bog SAC 002352, River Suck Callows SPA 004097 and Shankill West Bog SAC 000326) within 15km of the proposal and that there was no reason to extend this radius in this case. The sites were considered with their qualifying interests and the reasons for screening them out are provided. The proposal's potential to contribute to in-combination effects on European sites was also considered with other plans and projects in the vicinity of the site listed. The DAFM also considered the environmental effects of the proposal across a range of criteria and determined that the project was not required to undergo the EIA process. The licence issued on 10<sup>th</sup> December 2020 subject to conditions, including the following;

- Approval on 4.15 ha western part of Plot 1, as per map provided with DAFM ecology report, 1/12/2020. All other areas excluded.,
- Revised Bio and species map to be provided prior to commencement of works.,
- 20m setback from Aquatic zone on southern boundary. Sheep fence if sheep adjoin.,
- Adhere to forestry biodiversity guidelines,
- Adhere to forestry & water quality guidelines.

### **Grounds of Appeal and Statements of Fact**

The decision to grant the licence is subject to one appeal. The grounds of appeal outline that:

- Copy of Appropriate Assessment Screening (AAS) Documents clearly states in its determination that the proposed project in combination with other plans or projects would not have a significant effect and therefore the conclusion was to screen out and as such the project does not advance to Appropriate Assessment.
- The Independent Ecological Survey also states the proposed project would not cause significant effect if the measures in the report were carried out.
- The DAFM Ecology Report is by a Forest Service Ecologist. The same Ecologist who carried out the AAS.
- The DAFM Ecology Report and the statements within it were the basis for refusing nearly 9 ha of this application.
- It states in the Ecology Report that it is DAFM's view that it cannot rule out that there will be no long term local Environmental and Silvicultural impacts on a significant part of the site from proposed CN82565 afforestation.
- It states in the Ecology Report that potential impacts on the retained Fen/Wet Grassland and run off into the river cannot be ruled out.

It also queries and outlines;

- What is the scientific/ecological basis for the decision to rule out nearly 9 ha of the application?
- Section B, point 1 Appropriate Assessment Screening Determination (AASD) Document states the proposed application is screened out but the same Forest Service Ecologist does a supplementary Ecological Report Document which is the basis for refusing nearly 9 ha. Documents AASD and Ecological Report contradict each other.
- Document AASD was the priority document for this site and its determination was that the proposed afforestation project should be screened out.

It concludes then that the basis of the appeal is;

- There is no scientific or ecology basis for refusing nearly 9 ha of this application, the document, AASD, is the priority document for this proposed afforestation CN82565 and the document, Ecology Report, contradicts document AASD even though both documents were done by the same Forest Service Ecologist, and
- seeks that FAC reverse this decision and grant approval to the full 13 ha based on the document AASD and backed by the Independent Ecology Survey.

In a statement to the FAC, the DAFM submitted that the decision was issued in accordance with DAFM procedures, Statutory Instrument 191/2017 and the 2014 Forestry Act. The DAFM Inspector submitted a chronology of events in processing the application including correspondence regarding further information requests to the applicant, responses to these from the applicant's forester and the involvement of a DAFM Ecologist in assessing the proposal and concluded by submitting that; "AA

screening determination was completed by Ecologist and an Ecological report was prepared, dated 01/12/2020 which summarised the reasons for approval on 4.15ha and refusal on the remaining area. I certified the file for approval on this basis on 07/12/2020 and Approval issued on 10/12/2020 for 4.15 hectares”.

The DAFM Ecologist who reviewed the application also submitted a statement with regard to the grounds of appeal. This included;

“...

*The AA screening process does not include an ecological impact assessment of the local and wider environment except where it relates to a European site, such as a hydrological link to a SAC downstream and potential water quality issues on aquatic habitats or aquatic species for which the SAC is designated or to a potential foraging habitat on an application site for a bird species in a SPA which is located a few KM away.*

*The other ecological issues are addressed in the DAFM Ecology Report and it is on the basis of the local ecological impacts and silvicultural issues that refusal of part of the application was recommended.*

...”

The DAFM’s Ecologist statement also included;

*“A large part of this application site was challenging from the outset due to the peat substrate, high water table and habitats of local biodiversity value....*

...

*The proposed afforestation included: GPC3 on most of the site, with GPC9/10 native woodland on the esker ridges. Drainage and fertiliser application were required. Drainage would result in a lowering of the water table and fertiliser application would increase nutrient status of the peat substrate and will likely have an adverse impact over time on the retained fen habitat which is the low lying part of the site into which the site drainage flows. Fen is a groundwater fed habitat that requires high water table and low nutrient status. Being on a peat substrate on a high water table there is likely to be a loss of phosphorous and sediment increase into the adjoin watercourse (Water Framework Directive – WFD SubCatchment\_Castlegar\_SC\_010 Water quality status is moderate). The drainage and fertilisation will also result in decomposition of peat and loss of carbon. This has not been quantified.*

*The CN82565 site also poses silvicultural challenges as outlined by the District Inspector. There are also future potential impacts during felling and reforestation re extraction impacts in terms release of sediment and phosphorous from the site.*

*Although this site is not designated for conservation, there are nevertheless a number of local ecological issues on this site, which the proposed forestry operations would impact upon and which would include lowering of the water table, nutrient enrichment and sediment increase to the adjoining watercourse whose WFD status is moderate. Obligations under the Water Framework Directive (2000/60/EEC) is to restore all waters to good status by 2027. Also indirect impacts on fen habitats and loss of carbon, combined with the silvicultural challenges on this site.*

*While the applicant revised the application and included additional mitigation in terms of increased set backs and broadleaf planting, nevertheless, after much consideration of the combined issues with the District Inspector, including ongoing potential impact on water quality, habitat loss, carbon loss and less than ideal conditions for commercial tree growth and harvesting, it was considered that a large part of the application site (c. 9ha) did not fulfil the objective of the Forestry Standards Manual 2015, “the maintenance of high silvicultural standards compatible with the protection of the environment is of paramount importance” and therefore to recommend refusal of that part of the CN82565 application”.*

### **Consideration of the FAC**

In addressing the grounds of appeal, that FAC considered in the first instance, under Article 6(3) of the Habitats Directive, any plan or project not directly connected with or necessary to the management of a European site, must be subject to an assessment of the likely significant effects the project may have on such a designated site, either individually or in combination with other plans and projects, having regard to the conservation objectives of that designated site. The DAFM, in this case, undertook a Stage 1 screening, and found ten European sites within 15 km of the proposal area, and that there was no reason to extend the zone of influence in this case. The sites identified were Camderry Bog SAC 002347, Carrownagappul Bog SAC 001242, Curraghlahanagh Bog SAC 002350, Derrinlough (Cloonkeenleananode) Bog SAC 002197, Levally Lough SAC 000295, Lough Corrib SAC 000297, Lough Lurgeen Bog/Glenamaddy Turlough SAC 000301, Monivea Bog SAC 002352, River Suck Callows SPA 004097 and Shankill West Bog SAC 000326. The FAC consulted publicly available information from the NPWS and EPA and identified the same sites with the River Suck Callows SPA appearing to be at a distance of 15km or marginally beyond this from the site. The DAFM Inspector initially documented holding off on his screening conclusion, in order for an ecologist to make a determination. This determination was outlined in the Appropriate Assessment Screening Determination document on file and the screening conclusions were to screen out each of the European sites with reasons given for these conclusions; this document was signed by a DAFM Ecologist on 1<sup>st</sup> December 2020. The DAFM Inspector then also recorded screening conclusions to screen out all ten sites with the reason given for each site in this document as the Appropriate Assessment screening by the ecologist and in-combination report. The DAFM had undertaken and recorded a consideration of other plans and projects, including forestry and non-forestry projects, on the week of 26<sup>th</sup> November 2020 in an in-combination report, and they concluded that the project, when considered in combination with other plans and projects, will not give rise to the possibility of an effect on the Natura sites listed.

The DAFM in its Assessment to Determine EIA Requirement recorded a consideration of the application across a range of criteria, including water, soil, terrain, slope, designated areas, archaeology, landscape and cumulative effects, and determined that the project was not required to undergo the EIA process. In this consideration, it did recommend that it be assessed by a DAFM/Forest Service Ecologist and in its record of Assessment to Determine EIA Requirement under Designated and non Designated Habitat Recommendation, recorded following referral to the DAFM/Forest Service Ecologist, answers of ‘yes’ to Adherence to Forest Service Guidelines, ‘yes’ to Ecological Survey and Report and ‘yes’ to Refusal in part. The file also evidences a DAFM/Forest Service Ecologist following a site visit, reviewing additional information received and revisions to the application, produced a report with an ecological evaluation

and concluded with a number of recommendations including to only approve the western part of the proposed site (4.15 ha) as in its view it cannot be ruled out that there will be long term local environmental and silvicultural impacts on a significant part of the site from the full proposal. These recommendations were later attached as conditions to the licence approval.

The FAC, having considered all the evidence before it, consider that the focus of the Appropriate Assessment Screening Determination and the Ecology Report was different, with the Appropriate Assessment Screening Determination focusing on Natura 2000 sites with the assessment of the likely significant effects the project may have on such sites either individually or in combination with other plans and projects and that the focus of the Ecology Report was not as narrow, with other ecological issues addressed, including non designated habitats, and it is on the basis of the local ecological impacts and silvicultural issues that refusal of part of the application was recommended.

The grounds of appeal submitted also include that the Appropriate Assessment Screening documents clearly state in its determination that the proposed project in combination with other plans or projects would not have a significant effect and therefore the conclusion was to screen out and as such the project does not advance to Appropriate Assessment and the FAC find this assertion in the grounds to be accurate but only insofar as the significant effect in question relates to a Natura site. The grounds also include that the Independent Ecological Survey also states the proposed project would not cause significant effect if the measures as outlined in the report were carried out. The FAC finds the report dated September 2019 gives an extensive site description, detailing the habitat, vegetation and fauna on site, reviews potential impacts, identifies the predominant potential for negative effects and identifies a number and range of mitigation measures. This report was prepared by an ecologist and submitted by the applicant's forester following notice from the DAFM to exclude areas from the application and request an Ecological Assessment of the remainder of the site. The DAFM ecologist on reviewing the proposal including the submitted Ecological Assessment report raised further queries with the Applicant's ecologist who submitted the report, in relation to specific parts of the site, including the plot proposed for Birch. The ecologist on behalf of the applicant/forester responded to these queries. The DAFM ecologist then produced an Ecology Report, which gave background on the file, described the site and outlined potential impacts/issues on site.

The grounds of appeal question what is the scientific/ecological basis for the decision to rule out nearly 9 ha of the application and also asserts that there is no scientific or ecology basis for refusing this area of this application. This DAFM Ecology Report included in the section under Potential Impacts/issues the following:

*The proposed project was screened for Appropriate Assessment pursuant to Article 6(3) of the EU Habitats Directive, the European Communities (Birds & Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011) (as amended) and the Forestry Regulations 2017 (S.I. No. 191 of 2017), as amended by inter alia the Forestry (Amendment) Regulations 2020 (S.I. No. 31 of 2020).*

*The AA screening concluded that there are no likely adverse impacts to Natura 2000 sites (See AA Screening & Determination report 01.12.2020).*

*Following a review of this application with the District Inspector, and taking into consideration the site visit, the additional information received and the revisions to the application, it is DAFM's view that it cannot be ruled out that there will be long term local environmental and sylvicultural impacts on a significant part of the site from the proposed CN82565 afforestation.*

*The high water table on the peat substrate will require maintenance of drains. Fertilizer application will be required. Potential impacts on the retained fen/wet grassland and runoff into the river cannot be ruled out.*

*The location of part of the site in a peaty hollow makes it prone to frost.*

*The young forestry plantation to the north of the site on similar substrate is not performing well.*

*The Esker ridge proposed for GPC 8 is on very shallow glacial substrate. This would possibly be more suited to a native woodland scheme that does not require ground preparation.*

*Based on the ecological and sylvicultural [sic] assessment of this application as a whole, and taking into consideration the site inspection, the further information received and revisions to the application, the following is recommended.*

The FAC in considering all of the evidence finds scientific/ecological basis was outlined in the DAFM Ecology Report for refusing the c. 9 hectare area to be a reasoned assessment and appraisal for excluding the identified areas in the granting of the licence.

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 not satisfied that a serious or significant error or a series of errors was made in making the decision or that the decision was made without complying with fair procedure and is therefore affirming the decision of the Minister regarding licence CN82565.

Yours sincerely,

A large black rectangular redaction box covering the signature of Myles Mac Donncadha.

Myles Mac Donncadha, On Behalf of the Forestry Appeals Committee