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5th October 2021.

Subject: Appeals FAC 102/2021, FAC 109/2021 and FAC 110/2021 regarding licence CN85357

Dear [REDACTED]

I refer to the appeals to the Forestry Appeals Committee (FAC) in relation to the above licence issued by Department of 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.

Background

Licence CN85357 for the afforestation of 9.33 hectares at Cloonerk, Co. Roscommon was granted by the DAFM on the on the 1st June 2021.

Hearing

A hearing of appeals FAC 102/2021, FAC 109/2021 and FAC 110/2021 was held by the FAC on 17th September 2021 by a sub-division of the FAC attended by Mr. Donal Maguire (Deputy Chairperson), Mr. Derek Daly & Mr. Vincent Upton. Secretary to the FAC: Ms. Marie Dobbyn.

Decision

Having regard to the evidence before it, including the record of the decision by the DAFM, the notice of appeal, submissions made at the oral hearing, all other submissions received, all materials on file, and in particular the following considerations, the FAC has decided to vary the decision of the Minister regarding licence CN85357.

Licence

The licence pertains to an application for an afforestation licence for 9.33 ha at Cloonerk, Co. Roscommon on a site which is divided into a number of plots plots and the species to be planted as approved include a range of conifer and broadleaf species with Sitka spruce predominating in the largest plot (plot 1) of 5.95 hectares and a range of broadleaf species in plots 2 and 3 and a bio planting in plot 4. The four plots surround an existing dwelling other than for an access road to the dwelling. Documentation on file refers to the predominant soil type underlining the project area is predominantly brown podzolics in nature. The slope is predominantly flat to moderate. The project area is crossed by / adjoins an aquatic zone(s). The vegetation type(s) within the project area comprise agricultural grassland. Documentation submitted includes site notice and mapping including fencing maps and a

series of biomaps. In relation to WFD project lies within the River Sub-Basin Clooneigh_10 WFD status: Moderate and in terms of risk is indicated as at risk.

The licence application was referred Roscommon County Council who did not respond. The application was also referred to the National Parks and Wildlife Service (NPWS) and no response was received. A reminder letter was sent on the 1st April 2021 and a response was received on the 21st May 2021 with no comment to make on this application other than a general response attached that cites general requirements under legislation.

Two third party submissions from the appellant was made to DAFM during the consideration of the licence.

The assessment of the licence application by DAFM included a desk and field assessment as indicated in the Statement of Facts (SoF) to the FAC. The project was assessed by the DAFM ecologist who inspected the site.

In relation to Appropriate Assessment screening the project was the subject of an Appropriate Assessment Screening Determination dated the 21st of May 2021 by the ecologist where the following seven Natura sites were screened out, Annaghmore Lough (Roscommon) SAC (001626); Ballinturly Turlough SAC (000588); Corbo Bog SAC (002349); Fortwilliam Turlough SC (000448); Lisduff Turlough SAC (000609); River Suck Callows SPA (004097) and Lough Funshinagh SAC (000611) due to the nature and scale of the proposed project, the nature of the Natura 2000 site and its Qis, the lack of hydrological connections and distance from Natura 2000 site to project site. Two Natura sites were screened in Lough Ree SPA (004064) screened in due to potential habitat suitability for some QIs and potential for a degradation in water quality as a result of the proposed project that may impact upon QIs and Lough Ree SAC (000440) due to potential for impacts to Natural Eutrophic Lakes, Alkaline Fen and Otter as a result of degradation in water quality that may occur as a result of the proposed project.

An Appropriate Assessment Report dated 21st May 2021 assessed all qualifying interests and outlines mitigations in relation to screened in sites. The report also looks at in-combination concluding, it is deemed that this project, when considered in combination with other plans and projects, will not give rise to any adverse effect on the integrity of any European Site.

An Appropriate Assessment Determination dated 21st May 2021 of the potential impacts on the likely significant effects of the activity / project on those European sites 'screened in' determined and has made certain, based on best scientific knowledge in the field and the European Communities (Birds & Natural Habitats) Regulations 2011 (as amended) and the Forestry Regulations 2017, as amended, and Article 6(3) of the Habitats Directive, that the project proposed under CN85357, individually or in combination with other plans or projects, will not adversely affect the integrity of any of the aforementioned European Sites, having regard to their conservation objectives, provided mitigation as outlined is implemented.

The Inspector's Certification of which there were three on file with the last indicated as 1st June 2021 indicates that all Natura sites are screened out with reference to the AA Determination. Furthermore, it

was stated that DAFM has determined that there is no likelihood of the project having any significant effect, either individually or in combination with other plans and projects, on these European sites.

Appeal

There are three appeals against the decision to grant the licence.

The grounds of appeal in relation to FAC 102/2021 refer to;

- The proposal will encircle the appellant's home.
- The project will have a detrimental effect on her quality of life and compromise the sustainability of her dwelling.
- Reference is made to the 60 metres setback rule a mitigation measure which does not serve to mitigate.
- The plantation will harm the value and sustainability of her property.
- The project is contrary to governments Rural Development policy (2021-2025) which aims to encourage families to remain in and move to rural areas, and for the sustainable ongoing use of existing single family dwellings in rural Ireland.
- This plantation sets a harmful precedent, which has the potential to result in undesirable properties becoming vacant and derelict If potential homeowners come to understand that an adjacent (surrounding) landowner will be given permission under the Forestry Act (2014) to enclose their property in forest against their wishes.
- With regard to the setback rule, the 60 metre setback measure may be effectual in mitigating loss of light to a property when the property is flanked by a plantation along part of its elevation. In this situation, the property will be fully enclosed and should be considered as an exceptional and nuanced case and the rule adapted to reflect this. The setback in this case does not mitigate in any way against what will be a complete loss of long views and the associated quality of low -level light.
- This is not the appropriate application of this measure and does not take into account the significant Impact of encircling a property in forest, cutting off all visual connection to the surrounding landscape. In addition to this the setback has not been applied at all to the access route my only means of accessing my home. This alone will create a significant sense of overbearing and in fact compromises personal safety, limiting views when driving, and isolating the property from the main road, Regarding, loss of light, once the sun drops to the horizon level of the tallest tree on the edge of the forest, the dwelling loses all direct sunlight.
- In the summer evenings this effect will be particularly pronounced, as hours of direct sunlight will be lost. In winter the sun being lower on the horizon, it will be completely lost to her home. In the same way it will lose significant amounts of early morning light and of course this becomes worse over time.
- While existing long views may not be protected in the legislation currently, the total loss of long views towards the landscape and mountains will have a detrimental impact on my own mental health and further emphasizes the fact that the adherence to the Forestry Act should not run counter to the aims of the Rural Development policy. The Minister is seeking to create a holistic rural environment where agriculture and non-farming communities are residing in harmony and

supporting each-others Interests. I do not see how this plantation achieves this. It cannot even be said that its creation outweighs the harm to my property through habitat creation, as the bulk of the trees proposed are non-native.

- The Sitka Spruce are being replaced in other countries, while In Ireland, it continues to be planted. These dense plantations are suffocating our countryside and driving out our wildlife. The plantation will further compound my sense of isolation, as it will Interfere with broadband and phone signals, getting worse over time. The basic grounds of appeal is that the application of the 60m setback rule Is not appropriate in this situation and does not serve Its purpose when the forest is proposed to encircle a property in all directions, blocking all views. The property should be entitled to retain long views and have access to low level light in at least two cardinal directions, as would be the basis for planning guidance when considering suitable dwelling design and best practice quality of life provisions. This plantation sets a harmful negative precedent with regards to planting forest in the vicinity of rural family homes and is counter-intuitive to the aims of the Rural Development Policy (2021-2025).

In a further submission received by the FAC on the 1st September 2021 the appellant indicates that she wishes to further reiterate the objections to a forestry plantation surrounding her home. The proposal will have a serious negative impact on mental health, and will greatly affect security and create a sense of isolation. The 60 metre ruling in this case is not sufficient, when the plantation is to completely encircle my property. There is already a forestry plantation a short distance from my home. Furthermore, the roadway and the bridge are not suitable for the transportation of heavy loads and the appellant would also have concerns about weed control, and what sprays will be used.

The appeal in relation to FAC 109/2021 refers to;

- The appellant refer to a local property owner and in common with other has concerns in relation to the project.
- The assessment including the AAD do not take into account encircling residential property.
- An assessment should require to consider the impact on properties and the need for setbacks to protect quality of life.

The appeal in relation to FAC 110/2021 refers to;

- The appellant refer to a local property owner and in common with other has concerns in relation to the project and in particular to the issue of setbacks from residential properties.
- Reference is made to isolation and enclosure.
- Reference is made to the issue of fire outbreaks.
- Reference is made to the absence of engagement with local property owners.

In a statement to the FAC, the DAFM indicated in relation to appeal that the decision was issued in accordance with our procedures, S.I. 191/2017 and the 2014 Forestry Act. It also states that DAFM is satisfied that all criteria as outlined in the standards and procedures have been adhered to in making a decision on the application. The Statement from Inspectorate indicates that the forester representing the applicant met with the landowner in order to discuss 60 metres setback from domestic dwelling. A 10m setback from the road to the house applies as outlined in section 6.5.1 of the Forestry Standards

Manual. The south facing plots (2&3) consist of broadleaf species in order to minimise shading. The AA screening procedure relevant at the time was applied. The proposal was screened out using the Habitat Table 18Dec19 and the Bird Foraging table 06Jan20. In combination assessment was carried out. All relevant information can be found on file.

Assessment of Appeal

In addressing the grounds of appeal, the FAC considered the requirements of the Habitats and EIA Directives, the completeness of the assessment of the licence application, whether there was an adequate assessment of cumulative effects and an examination of the procedures applied which led to the decision to grant the licence.

It is important to clarify initially that a number of the initial maps in the application process refer to a fifth plot of land not contiguous to the other four plots. The assessment of the licence including the AAS, AAR and AAD and Inspector's Certification refer to a project comprises 9.33 hectares of afforestation and the licence decision refers to four plots comprises 9.33 hectares of afforestation.

In considering the appeal the FAC noted that the EU EIA Directive sets out in Annex I, a list of projects for which EIA is mandatory and that Annex II contains a list of projects for which member states must determine through thresholds, or on a case-by-case basis (or both), whether or not EIA is required. The Irish Forestry Regulations 2017, in relation to forestry licence applications, require the compliance with the EIA process for applications relating to afforestation which involve 50 hectares or more and the construction of a forest road of a length greater than 2000 metres and any afforestation or forest road below the specified parameters where the Minister considers such development would be likely to have significant effects on the environment. The proposal is for the afforestation of 9.33 hectares which is substantially subthreshold. The DAFM undertook a sub-threshold consideration of the proposal across a range of criteria including existing land use, cumulative effect and extent of project, designated and non-designated habitats, archaeology, and landscape and concluded that it should not proceed to EIA. Having regard to the record of the decision and the submitted grounds, and the nature, scale and location of the proposal, the FAC is satisfied that the DAFM did not err in its decision concerning EIA.

In relation to the Habitats Directive, the FAC examined the Appropriate Assessment undertaken by the DAFM including the initial screening and Determination. The FAC examined publicly available information from the EPA and NPWS and identified the same nine sites within a 15 kilometre radius. The FAC considered the nature, scale and location of the proposal, the European sites identified, and their conservation objectives and the screening conclusions provided by the DAFM. The DAFM considered each site in turn and provided the reasons for screening all the sites and the FAC concurs with the conclusion to advance to Appropriate Assessment stage in relation to the screened in European Sites.

The FAC also considered and assessed the Appropriate Assessment Determination (AAD) and the findings and conclusions as set out. Details of other plans and projects were also examined including other forestry projects. The FAC noted in the AAD that the Minister determined that there is no likelihood of the afforestation project CN85357 having any significant effect, either individually or in

combination with other plans or projects, on European sites in view of their conservation objectives and the reasons as set out and provided the mitigation is implemented which is outlined in the AAD. The FAC is satisfied that the DAFM did not make any serious or significant error in their decision regarding Appropriate Assessment and concurs with the conclusions reached.

The FAC considered the nature, scale and location of the proposal, the European sites identified, and their conservation objectives and the reasons provided by the DAFM for screening them out. The DAFM considered each site in turn and provided the reasons for screening all the sites out for Appropriate Assessment. Details of other plans and projects were also examined. The proposed works are located outside of any European site. Neither is there evidence of protected habitats or species on the site. The FAC finds that the DAFM not err in relation to AA.

In relation to a pathway of effects to a European site the FAC noted that reference is made in the Inspector's Certification that the project area is crossed by or adjoining an aquatic zone. In terms of potential effects on a Natura site the AA screening and determination have identified the absence of a hydrological link and distance in relation to seven of the sites. In relation to the two screened in sites Lough Ree SPA (004064) and Lough Ree SAC (000440) measures are identified and it is deemed with the inclusion of these measures that this project, when considered in combination with other plans and projects, will not give rise to any adverse effect on the integrity of any European Site.

In relation to potential hydrological impacts and on water quality generally it is noted that submissions made to DAFM refer to the proximity to the Carrowcrin River. In relation to WFD project lies within the River Sub-Basin Clooneigh_10 WFD status: Moderate and in terms of risk is indicated as at risk. Forestry the FAC has noted is not identified in EPA documentation as a pressure in the catchment. It is noted that a watercourse adjoins the project and is identified on the submitted mapping. The measures as set out in the AAD and the conditions of the licence reflect this and also adherence to the Environmental Requirements for Afforestation and the Forestry Standards Manual. These measures include requirements in relation to setback from water and aquatic zones with varying setbacks in relation to the watercourse to the east of the project and the watercourse to the south of the project; planting of native broadleaves within this setback which are to be pit planted by hand; no machinery to be allowed within the water setback for the aquatic zone in Plot 1, 2 and 3; requirements in relation to preparation, storage and disposal of fertilisers, herbicides (and other pesticides), fuel and machine oils materials (or any other potentially hazardous material on-site): adhere to the principles of Good Plant Protection Practice and to relevant sections of the Forest Protection Guidelines and Guidelines for the Use of Herbicides in Forestry.

The FAC has examined this issue and from an assessment of the topography of the site; the mapping and aerial imagery of the area; the nature and scale of the project the measures proposed and the conditions of the licence; it is considered that the proposal will have no effect on the waterbody arising from the proposed project subject to compliance with forestry standards and conditions as specified.

In relation to other matters arising in the grounds of appeal the FAC noted that the appellants have raised as the major concern that the proposed project will in effect encircle/enclose one of the appellant's dwelling, and also refers to the proximity of the proposed forestry to the road leading to the

dwelling from the public road with the overall impact arising having a serious detrimental effect on the quality of life and creating a sense of isolation and that the 60 metre setback from the dwelling does not address the unique circumstances arising where forestry encloses a dwelling.

In responding to the appeal DAFM have indicated that the forester representing the applicant met with the landowner in order to discuss 60 metres setback from domestic dwelling. The south facing plots (2&3) consist of broadleaf species in order to minimise shading.

The proposed project comprises 4 plots as identified on the certified species map 22/04/2021. Plot 1 with an area of 5.95 hectares is located in the western and northern area of the overall site with Sitka spruce predominating in this plot. Plot 2 with an area of 1.67 hectares is located in the southern area of the site with proposed planting of Pendicular Oak and ADB. Plot 3 with an area of 0.53 hectares is located along part of the eastern boundary with proposed planting of Birch and plot 4 is a circular plot with an area of 1.14 hectares where bio planting is proposed. Plot 4 encircles the site of a dwelling and between plots 2 and 3 there is an access roadway from the main public road towards the site of the dwelling and this access road continues through plot 4 to the site boundary of the dwelling.

In terms of impact the proposed planting on plot no.1 will be the greatest impact given the nature of the proposed species to be planted. The proposed planting in plots 2 and 3 consists of broadleaf as referred to in the SoF and the level and scale of impact in relation to shading will be less owing to the nature of the proposed planting and the time scale of growth of the broadleaf species. In relation to assessing impact the *Environmental Requirements for Afforestation December 2016* published by DAFM in Section 2 relating to Design outlines a number of criteria for assessing an application for afforestation and the Forest Service is required to consider potential impacts across a range of issues and sensitivities. In relation to dwellings and setback from dwellings it is indicated that the purpose is to prevent encroachment and isolation, the blocking of light and the curtailment of views in relation to dwellings, associated buildings, and roofed farm buildings. Minimum setback, as measured from the outer wall of the dwelling houses: is stated as 60 metre minimum and the Environmental Requirements also refer to additional design measures referring to setback distance as most critical when a building is surrounded by forest on two or more sides and also to appropriate setbacks from dwellings, designed with appropriate edge planting with native broadleaf species, to avoid overshadowing and a sense of isolation.

In relation to the current project although noting that broadleaf species are proposed to the east and the south and a 60 metre setback is proposed by way of a bio area the FAC consider that the complete encirclement/enclosure of a dwelling even allowing for the provision of the 60 metre setback will create a sense of isolation and it is appropriate applying the criteria stated in the environmental requirements that plot 3 should be excluded in any licence approval to provide for greater connectivity with the public road.

In relation to setback along the access to the dwelling from the main public road it is noted that setbacks set in relation to roads in the *Environmental Requirements for Afforestation December 2016* and also the *Forestry Standards Manual November 2015* refer to setback for public roads and section 6.5.1 of the Manual identifies a setback strip of 10 metres for broadleaves. The documents also refer to avoidance of

tunnelling along the road. It is not clear whether the roadway from the main public road to the dwellinghouse site is a public road, this appears unlikely, but the unusual circumstances of encirclement/enclosure does present issues of isolation and security. The biomap submitted with the application suggests a 5 metre setback which the FAC does not consider sufficient in the circumstances. The exclusion of plot 3 will omit planting on one side of the road but it is also considered that a setback of 10 metres should apply along the section of road adjoining plot 2 to address issues relating to isolation and visual connectivity from the dwelling house to the public road.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal. As outlined in this letter, the FAC is satisfied that no significant errors was made in making the decision at the assessment stages. The FAC from the reasons as outlined considers that serious errors were made in the consideration of local landscape impacts and is varying the decision of the Minister regarding licence CN85357 in line with Article 14B of the Agricultural Appeals Act 2001 to (1) exclude plot 3 as identified on the certified species map 22/04/2021 from the proposed planting and (2) to require that a minimum setback of 10 metres from the road to the dwelling to apply in relation to plot 2 as identified on the certified species map 22/04/2021.

Yours sincerely,

A black rectangular redaction box covering the signature of the official.

Derek Daly On Behalf of the Forestry Appeals Committee