



28<sup>th</sup> March 2022

**Subject:** Appeal FAC 148/2021 relating to Licence CN88720

Dear

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 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**

Having regard to the evidence before it, including the full DAFM record of the decision, the notice and grounds of appeal and a Statement of Fact (SoF) provided by the DAFM, all materials on file, and in particular the following considerations, the FAC has decided to set aside and remit the decision of the Minister regarding licence CN88720.

#### **Licence**

The licence is for the afforestation of 2.02 Ha. of Agro-forestry GPC 11 in the townland of Carrowcrin, Co. Leitrim. Licence CN88720 was submitted to the DAFM on the 17<sup>th</sup> of May 2021. On the 10<sup>th</sup> of December 2021 the DAFM issued a notice granting the licence with conditions.

There is one appeal against the decision to grant the licence.

#### **Forestry Appeals Committee.**

The appeal was considered by at the sitting of the FAC held on the 7<sup>th</sup> of March 2022. The FAC Members present were: Mr. Myles Mac Donncadha (Deputy Chairperson), Mr Derek Daly and Mr. Iain Douglas.

#### **Hearing**

At the sitting of the FAC it had before it the full DAFM record of the decision, the notice and grounds of appeal and a Statement of Fact (SoF) provided by the DAFM. Following examination and assessment of documentation on the file before it, the FAC decided an oral hearing was not warranted in this instance.

#### **Background**

The proposal consists of afforestation of 2.02 Ha. of Agro-forestry which combines forestry and pasture. The licence application was referred to the National Parks & Wildlife Service (NPWS) on the 5<sup>th</sup> of October 2021 which replied on the 12<sup>th</sup> of October 2021 that it had no comment to make and enclosing an appendix, *Appendix 1: General observations from the National Parks and Wildlife Service*

(NPWS) in relation to forestry application referrals containing general. The licence application was also referred to the Forest Service archaeologist on the 21<sup>st</sup> of September 2021. This report was agreed with the with National Monuments Service on the 1<sup>st</sup> of October 2021.

The Inspector's Certification Report dated the 10<sup>th</sup> of December 2021 recommends that the licence be approved subject to seven conditions.

The Inspector's Assessment to Determine EIA Requirement dated the 10<sup>th</sup> of December 2021 concludes that the application should not be subject to the EIA process.

The Inspector's Appropriate Assessment Screening Report dated the 10<sup>th</sup> of December 2021 describes the soil type underlying the project area as being predominantly podzolic in nature, with a predominantly flat to moderate (<15%) slope and that the project area is crossed by or adjoins an aquatic zone(s). The vegetation type(s) within the project area comprises grass and rush.

The file contains an In-combination assessment carried out by the DAFM on the 6<sup>th</sup> of November 2021 that concludes that *"there is no likelihood of the proposed afforestation project CN88720 itself, i.e. individually, having a significant effect on certain European Site(s) and associated Qualifying Interests/Special Conservation Interests and Conservation Objectives, as listed in the main body of this report, in light of that conclusion, there is no potential for the proposed project to contribute to any significant effect on those same European Site(s), when considered in-combination with other plans and project."*

The file contains the applicant's Pre-Approval Submission Report (undated) which sets out details regarding ownership, site condition, silvicultural conditions, plot & species, operation of the proposal, fencing, environmental considerations and whether acid sensitive tests are required.

The file contains the report of the Forest Service archaeologist date 21<sup>st</sup> September 2021 that contains two conditions which were incorporated into the licence.

## **Appeal**

There was one appeal against the decision to approve the licence and the grounds of appeal are summarised as follows:

1. The proposed planting will impact on the adjoining field owned by the appellant by reduced sunlight.
2. The proposed planting is in close proximity to 10 occupied dwellings.
3. The proposed planting will reduce the feasibility of further residential development.
4. Further impact on appellant's lands due to recent conifer planting to the immediate west of appellant's land.
5. Relentless afforestation decimating townlands.
6. Detrimental socio-economic impact of forestry.
7. Reduction of arable land bank and pockets of good land in North Leitrim.

The appellant made a post-appeal submission to the FAC outlining his family circumstances of how he came to Carrowcrin and that he had not objected to forestry in the area but given this proposal in conjunction with nearby forestry he feel he has to object.

The applicant made a post-appeal submission to the FAC outlining the reasons why he has decided to plant these trees and that he hopes the land will continue to be grazed.

## Hearing

### ***DAFM Statement of Fact provided to the FAC***

At the hearing the FAC had before a Statement of Fact (SoF) provided by the DAFM dated 2<sup>nd</sup> February 2022 which confirms the administrative details of licence application CN88720; that indicates that a desk and field assessment were carried out on the proposed afforestation (the date of the field inspection was the 3<sup>rd</sup> of November 2021) and that the DAFM was satisfied that all criteria in its standards and procedures had been adhered to in making the decision on this licence application. The SoF included a statement dated the 26<sup>th</sup> of January 2022 from the Forestry Inspector confirming that the current Appropriate Assessment screening of November 2019 was carried out, that the standard operating procedures were applied, and contained the response that the land was in the full ownership of the applicant.

### ***Consideration by FAC.***

The FAC consulted with publicly available mapping provided by the Environmental Protection Agency, the OSI, the Forest Service, and other on-line services. Aerial photography and mapping, including that submitted with the application show that the lands are enclosed by hedgerows on all four boundaries and appear to be improved agricultural grassland, as are the adjoining lands to the east, west and south. EPA mapping shows the soil underlying the site as Surface-water and Groundwater Gleys.

### ***Appropriate Assessment (AA).***

The FAC noted that the DAFM had carried out a Stage 1 screening assessment for Appropriate Assessment, including an in-combination assessment, in advance of making the decision to grant the licence. The FAC noted the procedures adopted by the DAFM in its screening, listing the qualifying interests and conservation interests for twelve sites within the 15km radius of the development and assessment of the project design, location of the project and possible pathways to the listed designated sites. The FAC further noted that, while the DAFM concluded that there was no possibility of significant effects arising in the case of all the identified Natura 2000 sites listed, there are inconsistencies and errors in the reasons for the conclusions. In the cases of Ballysadare Bay SAC & Ballysadare Bay SPA the reason given for screening out is *"The position of the project area downstream from the Natura site, and the subsequent lack of any hydrological connection."* The project area is in fact upstream of those two Natura 2000 sites. In the case of Lough Gill SAC the relevant watercourse shown on the applicant's Biodiversity/Operational map drains to WFD river watercourse Killanummary\_20 which connects hydrologically to that Natura 2000 site and as such constitutes a pathway. In the cases of Lough Arrow SAC & SPA, Unshin River SAC, Ben Bulbin, Gleniff And Glenade Complex SAC, Boleybrack Mountain SAC, these Natura 2000 sites lie in a different WFD sub-catchment and so the project area cannot be downstream of those sites. The FAC is satisfied that the inaccuracies in the reasoning for the conclusions reached in the AA Screening in the case of Ballysadare Bay SAC, Ballysadare Bay SPA, Lough Gill SAC, Lough Arrow SAC, Lough Arrow SPA, Unshin River SAC, Ben Bulbin, Gleniff And Glenade Complex SAC and Boleybrack Mountain SAC constitute a serious error in the processing of this licence.

### ***Environmental Impact Assessment (EIA).***

The FAC noted that the DAFM carried out an Assessment to Determine EIA Requirement which recorded a consideration of the application across a range of criteria relevant to the development proposed, including water, soil, terrain, slope, designated areas, or landscape and cumulative effects, and determined that the project was not required to undergo EIA. The FAC notes that the proposed afforestation is not located in an area of High Visual Amenity identified in the Leitrim County

Development Plan 2015-2021. The FAC is satisfied that the range and type of criteria considered is appropriate for DAFM to determine whether an EIAR was required having regard to the nature, scale, and location of the proposal.

#### ***Water Framework Directive (WFD).***

EPA mapping shows the site lying within Catchment 35 Sligo Bay. The relevant sub catchment is the Bonet\_SC\_020 within which forestry is not identified as a pressure. EPA mapping shows the site lying between two WFD river water bodies the Killanummery\_10 to the east which was of moderate status in the 2013-2018 period and Killanummery\_20 to the west which was of good status in the 2013-2018 period and are now both at risk. The underlying Ground Water body is Killarga IE\_WG\_G\_0055 which is Not at Risk.

#### ***FAC Considerations.***

In addressing the grounds of appeal, the FAC considered the following.

##### Impact on the adjoining fields.

The FAC considered the appellant's specific ground of appeal that the proposed planting would impact his adjoining field. The FAC considered the grounds related to sunlight being blocked by the project and noted that the land subject of this licence already enclosed by hedgerows and that the common boundary with the appellant's field has a specific setback provision, requiring 5 metres of unplanted land along that boundary as a result of the boundary being a relevant watercourse. The FAC further noted the proposed spacing of the trees is 20m apart (applicant's Pre-Approval Submission Report); the density of the trees specified for GPC 11 Agro-forestry planting is 400-1000 trees/Ha; the proposed species consist of Cherry, Crab Apple, Additional Broadleaves, Birch, Pedunculate oak, Scots pine and Sycamore. The FAC concluded that these measures should mitigate effectively against any significant loss of light and that it was not satisfied that the Minister had erred in this regard.

##### Proximity to dwellings.

The FAC considered the appellant's specific ground of appeal that the proposed planting is in close proximity to occupied dwellings. The FAC noted that the biomap submitted by the applicant dated 17<sup>th</sup> May 2021 does not specify a set-back from dwellings but that Condition 5 of the licence specifies a 30m setback from the applicant's dwelling. The FAC noted the provisions of Section 6.5 of the Forestry Standards and Procedures Manual 2015 requiring a set-back from dwellinghouses & associated buildings of 60 metres, or 30 metres with the *written* consent of the owner and also that Condition 2 of the licence for the applicant to complete all works in accordance with the measures set out in the Environmental Requirements for Afforestation and the Forestry Standards Manual (as amended by periodic Circulars). The FAC therefore considered that the DAFM had not erred in its processing of the application as it relates to this ground of appeal.

##### Reduction of feasibility for further residential development.

The FAC considered the appellant's specific ground of appeal that the proposed planting would reduce the opportunity for residential development. The FAC noted that the land is private agricultural land owned by the applicant who has indicated that it is his intention that the land will remain as agricultural land.

##### Further impact on appellant's lands due to recent conifer planting to the immediate west of appellant's land.

The FAC considered the appellant's specific grounds of appeal that the proposal would further impact on appellant's lands due to recent conifer planting to the immediate west of appellant's land. The FAC

noted that no specific evidence had been submitted as to how this might occur. The FAC does not consider that there is any evidence that the proposal as licenced should have a significant detrimental impact on the appellants' lands.

The amount of afforestation and detrimental socio-economic impact of forestry.

The FAC considered the appellants' specific grounds of appeal that the proposal would increase the amount of afforestation in the area and have effect on the local community. The FAC noted that this ground of appeal contains no detail as to what negative impact this afforestation will have on the local community. The FAC considers that issues related to national forest policy that, under law, is the responsibility of the Minister for Agriculture, Food and the Marine. The FAC can address only the grounds of appeal that relate directly to the licence for afforestation before it and cannot take account wider non-forestry considerations of afforestation on a particular area as these relate to forestry policy. The DAFM did record a consideration of the proposal across a number of criteria that includes both environmental and social effects and the cumulative effect of the proposal. Tree planting under the proposal is required to be set back 60 metres from dwellings. The land is private agricultural land with a network of existing hedgerows that will be retained and is not in a prominent position in the landscape. The proposal was considered by a DAFM Archaeologist whose report included conditions in relation to cultural features on the adjoining lands. The FAC does not consider that there is any evidence that the proposal as licenced would have a significant detrimental impact on the local community.

Reduction of arable land & good land in North Leitrim.

The FAC considered the appellants' specific grounds of appeal that the proposal would reduce the amount of arable land & good land in North Leitrim. The FAC noted that grazing on improved grassland is the predominant agricultural production in this area and that there is little evidence of arable farming. Agro-forestry by definition incorporates grazing/pasture and provision for keeping livestock within the forestry, the applicant has indicated sheep grazing will continue. Given the fact that that the land is already used for grazing and not arable farming the FAC does not consider that there is any evidence that the proposal as licenced would result in a loss of arable land.

**Conclusion**

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal (including those made post appeal) and the Statement of Fact submitted by the DAFM. In accordance with Article 14B of the Agricultural Appeals Act 2001(as amended) the FAC is satisfied that a series of errors was made in the making of the decision regarding licence CN88720 and that the licence should be set aside and remitted to the Minister to DAFM to undertake a new screening for significant effects on European sites of the proposal itself and in combination with other plans and projects in line with Article 6(3) of the EU Habitats Directive and provide reasons for the screening decision.

Yours sincerely,

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Iain Douglas,  
On Behalf of the Forestry Appeals Committee