



5<sup>th</sup> July 2022

**Subject:** Appeal FAC 005/2022 relating to Licence CN85823

Dear

I refer to the 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.

**Licence.**

The licence is for 17.27 Ha of GPC 3, GPC 5 and GPC8 afforestation at Lisgub, Co. Galway. The application was submitted to the DAFM on 02/02/2020. There were ten third-party submissions on the licence. The Department of Agriculture, Food and the Marine (DAFM) issued the licence on 14/01/2022 with a number of conditions, including additional areas of ABE, implementation of mitigation measures to protect otter, implementation of planting buffers as set out in the DAFM Archaeology report, the planting of an additional 5 rows of broadleaved trees from setbacks required from dwellings and public roads.

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

**Forestry Appeals Committee.**

The appeal was considered at a non-oral hearing of the FAC held on 27/04/2022. The FAC Members present were: Mr. Myles MacDonncadha, (Deputy Chairperson), Mr Derek Daly and Mr. Iain Douglas. Secretary to the FAC: Mr. Michael Ryan. At the hearing the FAC 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.

**Decision.**

Having regard to the evidence before it, in particular the record of the decision by the DAFM, the notice and grounds of appeal, the SoF from the DAFM and the considerations set out hereunder, the FAC has decided to vary the decision of the Minister for Agriculture, Food and the Marine to grant licence Reference No. CN85823 at Lisgub, Co. Galway as issued.

**Background.**

Forest licence application CN85823 consists of the afforestation of 17.27 Ha of GPC 3, GPC 5 and GPC8 planting at Lisgub, Co. Galway in fourteen plots. The SoF provided by the DAFM dated 10/03/2022 indicates that a both a desk and field inspection were carried out on the proposed afforestation, the field inspection took place on 22/10/2021. The final Inspector's Certification Report (with a spatial run dated 11/01/2022) describes the soil type underlying the project area as

being predominantly highly modified peat and peaty podzols with a predominantly flat to moderate (<15%) slope and that the project area is crossed by/adjoins an aquatic zone(s). The vegetation type(s) within the project area comprises of grass and grass/rush.

The DAFM referred the licence application to the National Parks & Wildlife Service on 15/09/2020 which replied on 27/11/2020 stating that; part of three plots were identified as liable to flooding on Ordnance Survey maps; while the floodplain may be historical, local information was that the lands mentioned do still flood; the Teagasc Soil maps identify the soil type differently from that stated in the application; consideration should be given as to how the site will be drained and that the potential risk to otters should be considered. The report also lists a number of conditions and provided a document with general observations.

On 12/11/2020 the DAFM requested the applicant to submit a soil survey and report for the lower parts of Plot 7 and Plots 8, 9 and 10 and that any areas of marl/high pH soil should be excluded and to assess Plots 8, 9 and 10 for suitability for Native Woodland Establishment Scheme (NWS) riparian broadleaf planting, due to soil conditions, liability to flood and high frost risk and proximity to the river. A revised plan, based on the soil survey and report, excluding unsuitable land would be considered further.

A soil survey dated 19/08/2021 recommended that the elevated sections of plots 7, 8 and 10 are suitable for Sitka or Norway spruce; that wetter, shallower mineral soils or phragmites peat areas adjoining the Bunowen river should be planted with riparian broadleaf species (indicating that Annex 4 Scenario A of the NWS GPC9 & GPC10 Silvicultural Standards 2015 will be complied with); the remaining section of phragmites peat area in plot 7 could be planted with a pioneer birch woodland, which fits in with qualifying characteristics under scenario 5 of the NWS; areas with marl less than 70cm deep could be included as research shows that birch should grow well under such conditions.

Revised species maps were submitted on 19/08/2021 based on the findings of the applicant's soil report.

On foot of submissions the DAFM Archaeologist prepared a report on the licence application dated 08/09/2020. The report points out that while the area of the licence does not contain any Recorded Monuments or SMR sites there are the remains of a country house (GA 060-150) 30m south of Plot 1 and an historic settlement along the public road adjoining Plots 8, 9 and 10. The report sets out a number of conditions including planting setbacks.

The final Inspector's Certification Report on file dated 11/01/2022 includes an Assessment to Determine Environmental Impact Assessment (EIA) Requirement which assesses the environmental factors relating to the proposed afforestation in order to determine whether the proposed afforestation requires an Environmental Impact Assessment Report (EIAR) and concluded that it is not necessary to subject the proposed afforestation to EIA.

The final Inspector's Certification Report also includes an Appropriate Assessment Screening which notes that there are six Natura 2000 sites located within 15Km of the proposed afforestation, Carrowagappul Bog SAC (Site Code 001242), Curraghlahanagh Bog SAC (Site Code 002350), Lough Corrib SAC (Site Code 000297), Monivea Bog SAC (Site Code 002352), River Suck Callows SPA (Site Code 004097) Shankill West Bog SAC (Site Code 000326). All six sites are screened out on the basis of Other Factors, Distance, according to the DAFM Bird and Habitat Tables.

An in-combination assessment carried out by the DAFM dated 11/01/2022 concludes that *"there is no likelihood of the proposed Afforestation project CN85823 itself, ie. 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."*

#### **Appeal.**

There was one appeal against the decision to grant the licence. The grounds of appeal were accompanied by photographs and a video recording which were viewed as part of the FAC deliberations. The grounds of appeal are summarised as follows:

1. Access: The public road is substandard width & alignment and is unsuitable for heavy vehicles, the condition of the road pavement is pot-holed, the existing forest adjoining plots 6 & 7 has not been felled due to poor road accessibility.
2. Risk to livestock: There is a risk of TB spreading from Badgers & Deer inhabiting the forest.
3. Impact on Tourism: The Forest will impact on the landscape, river and bogland.
4. Impact on business: A pony-trekking business uses the public road adjoining the forest.

#### **DAFM Statement of Fact.**

The FAC had before it a Statement of Fact (SoF) provided by DAFM and dated 10/03/2022. This included confirmation of the administrative details of licence application CN85823 as outlined above and stated 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 also included a contribution from the DAFM Forestry Inspectorate dated 08/03/2022 which set out the file history; submitted that the relevant AA procedure in operation at the time was applied; that Standard Operating Procedures were applied; and recommended a number of conditions.

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

The FAC consulted with publicly available mapping provided by the Environmental Protection Agency, the OSI, the DAFM, and other on-line services.

The application describes the lands as enclosed, agricultural land currently used for grazing on a mineral soil with a grass, grass/rush vegetation cover. Aerial photography including that submitted with the application show the land that it is proposed to plant is primarily agricultural grassland. The site comprises fourteen plots. The Bunowen river runs along on the eastern border of plots 7, 8 and on the southern border of plot 10. A number of plots front onto a local road, the L1704.

Soil types on the site, identified through EPA mapping, are Surface water Gleys and Groundwater Gleys.

The site lies within the Upper Shannon WFD Catchment and the Suck \_SC\_080 Sub catchment.

EPA mapping shows that the nearest identified waterbody to the site is the Ahascragh\_20 which adjoins plots 10, 13 & 14. In period 2013-2018 this waterbody was classified as Good Status and is not at risk.

The underlying Groundwater body is Suck South IE\_SH\_G\_225 which was classified as having Good Status in the period 2013-2018. The risk is to be reviewed.

The proposed afforestation 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 six sites identified for screening in the final Inspector's Certification Report are the only sites within a 15Km threshold distance for impacts to Natura 2000 sites. The FAC noted that DAFM completed and recorded a screening for Appropriate Assessment (AA) that determined that the proposal itself and in-combination with other plans and projects would not impact on a Natura 2000 site.

The FAC noted that the DAFM recorded, in its Assessment to Determine EIA Requirement, a consideration of the application across a range of criteria relevant to the development proposed, including water, soil, terrain, slope, designated areas, landscape and cumulative effects, and determined that the project was not required to undergo EIA. 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.

The site of the proposed afforestation is located within in an area classified as being of Low Landscape Value and Low Landscape Sensitivity in the Galway County Development Plan 2015-2021. The FAC does not consider the proposed afforestation will have an adverse impact on the landscape.

In addressing the grounds of appeal, the FAC considered the following matters;

#### Access

The FAC notes that this licence application is for afforestation only and that the operational details for the licence indicate that planting will be carried out by mounding and slit planting, operations normally carried out without the need for heavy machinery. The FAC is aware that there is a protocol between applicants and Local Authorities for the repair of any damage to the public road system and that there are statutory provisions under the Roads Act to ensure roads are maintained in a fit condition. The appellant has adduced no evidence that the existing forestry has not been harvested due to issues of access. The FAC therefore considered that the DAFM had not erred in its processing of the application as it relates to this ground of appeal, however, the FAC did consider that it is reasonable, given the condition of parts of the road pavement evident in the appellant's photographs, that the applicant should consult with the local authority on the usage of the public road.

#### Risk to livestock

The appellant raised concerns about the introduction of badgers and deer arising from the proposed afforestation and specifically cited concern due to possible disease transmission (including Bovine TB) to domestic livestock. The control of bovine TB is a national issue under the remit of the Eradication of Animal Disease (ERAD) Division within DAFM and the DAFM have policies and procedures in place that address the issue of possible TB transmission to cattle which would apply in this case. The FAC therefore considered that the DAFM had not erred in its processing of the application as it relates to this ground of appeal.

#### Impact on Tourism & Scenic Amenity

The FAC notes that the area within which the site is located is designated as having a Low Landscape Value and Low Landscape Sensitivity in the Galway County Development Plan 2015-2021. The application and record shows that consideration was given to the amenity and landscape of the area. The FAC notes that in addition to the 10m setback from the public road set out in the Environmental Requirements for Afforestation 2016, (compliance with which is a condition of the licence), a further condition of the licence requires the planting of an additional Minimum 5 rows of Native Broadleaved species adjacent to the setback. The FAC therefore considered that the DAFM had not erred in its processing of the application as it relates to this ground of appeal.

### Impact on business

With regard to the ground of appeal that the proposed afforestation will impact on the appellant's stables & pony-trekking business. The FAC was established under the Agriculture Appeals Act 2001, as amended, with a function to hear and determine appeals against decisions of the Minister for Agriculture, Food and the Marine under Section 7 of the Forestry Act 2014, (excluding grant aid), and the Forestry Regulations 2017-2020 in relation to afforestation, tree felling, forest road works and aerial fertilisation. The matter of this ground of appeal does not ultimately fall within the remit of the FAC itself to determine.

### **Conclusion.**

In considering the appeal, the FAC had regard to the record of the decision and the submitted grounds of appeal. The FAC is not satisfied that a serious or significant error or series of errors was made in the making of the decision or that the decision was made without complying with fair procedure. The FAC considers that the applicant should consult with the local authority on the usage of the public road. The FAC is thus varying the decision of the Minister regarding licence CN85823 in accordance with Section 14B of the Agricultural Appeals Act 2001 (as amended) to include a condition that *"Prior to the commencement of operations the applicant shall consult with Galway County Council with regard to usage of public roads."* In deciding to vary the decision, the FAC considered that the proposed development would be consistent with Government policy and good forestry practice.

Yours sincerely,

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Iain Douglas,  
On Behalf of the Forestry Appeals Committee

