



**An Coiste um Achomhairc
Foraoiseachta**

Forestry Appeals Committee

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29th January 2021

Subject: Appeal FAC106/2019, FAC107/2019, FAC108/2019 in relation to afforestation licence
CN82877

Dear [REDACTED]

I refer to the appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine (DAFM) in respect of afforestation licence CN82877, granted on the 9th April 2019. 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.

Hearing

An oral hearing of appeals 106/2019, 107/2019 and 108/2019 against CN82877 was conducted by the FAC on the 7th January 2021.

Participants:

FAC:	Mr Des Johnson (Chairperson), Mr Pat Coman, Ms Paula Lynch & Mr Luke Sweetman
Secretary to the FAC:	Mr Michael Ryan
Appellants:	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
Applicant's representative:	[REDACTED]
DAFM representatives:	Ms Mary Coogan & Mr David Ryan

Decision

An Coiste um Achomhairc
Foraoiseachta
Forestry Appeals Committee

Kilminchy Court,
Portlaoise,
Co Laois
R32 DWT5

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The FAC considered all of the documentation on the file, including application details, processing of the application by the DAFM, the grounds of appeal, submissions made at the Oral Hearing and all other submissions, before deciding to allow the appeal and set aside the decision of the Minister to grant this licence (CN82877).

The licence is for the afforestation of 12.4ha at Shraheens, Co. Mayo and involves a change of land use from agriculture to forestry. As per the DAFM information, the proposed project site is currently enclosed land, mainly under Grass/Rush with some areas of Scrub. The site is exposed/moderately exposed with a north/south aspect at an elevation of 80-90m. The soils on site are mineral with some pockets of peat in places. A public road divides the proposed development into two sections; east and west. The western section of the site contains an area of moderate slope that leads to a flat section before meeting a river waterbody, mapped by the Environmental Protection Agency (EPA) as Little (Strade), which is beyond the boundary of the project lands. This waterbody is referred to as Little River throughout the documentation submitted by the Applicant, the Appellants, and the referral body. Another EPA-mapped watercourse named Boleyard bounds one plot in the eastern section of the proposed project and runs just outside of another. There are no relevant watercourses within or directly joining the site. The proposed species to be planted comprises 10.64ha of GPC3 (90% Sitka spruce, 10% Additional Broadleaves) across four plots, 0.9ha of Alder/Additional Broadleaves, and three "Bio" plots totalling 0.86ha. The application states that ground preparation will consist of woody weed removal and mounding. Slit planting and herbicide vegetation control in years 0-3 are planned. The project site is in the Moy & Killala Bay Catchment and the Moy_SC_070 Sub-Catchment.

Following a desk and field assessment, the licence was granted on the 9th April 2019 with standard conditions plus the following additional conditions; i) exclusion of 0.23ha of existing forest land adjacent to dwelling/yard, maintain a 10m setback from the boundary wall of this dwelling/buildings, ii) retention of all broadleaves on site for landscape purposes, iii) adherence to the Environmental Requirements for Afforestation (ERA) (DAFM, 2016), iv) all guidelines to apply. The application was referred to Inland Fisheries Ireland (IFI) who responded on 6th March 2019. The IFI stated that:

- The project lands run adjacent to the Little River which provides Salmon and Trout spawning and nursery habitat for the wider River Moy system.
- The Little River flows into the River Moy SAC which is designated for the protection of Atlantic salmon, White-clawed crayfish and Lamprey species.



- This Catchment has been allocated good ecological status in the River Basin Management Plan which must be protected.
- This site is steeply sloping towards the Little River which will make silt control at harvesting difficult. An aquatic buffer zone of minimum 20m width must be established along the Little River with the retention of all native vegetation. Two rows of native broadleaf trees should be planted outside this buffer zone.
- Fertiliser should be applied by hand during the growing season in accordance with the guidelines. No fertiliser should be applied where soil Phosphorus reserves are adequate. Soil analysis should be carried out to determine this.
- IFI favours planting with native species such as Oak, Birch and Willow.
- Ground works should not be carried out when soils are saturated or during wet weather conditions. Forestry machinery must not travel through drains/streams or along aquatic buffer zone. Interceptor drains must be installed outside the aquatic buffer zone.

In assessing the application, the DAFM carried out a Stage 1 Appropriate Assessment (AA) screening on the 12th March 2019 which found that the project site was >3km from Natura 2000 site and does not overlap with any Freshwater Pearl Mussel (FPM) site. The DAFM concluded that there is no factor which overrides this physical separation and deemed there is no possibility of the proposed development, individually, having a significant effect on any Natura site due to the physical and lack of any ecological pathway. In this instance the DAFM did not complete an In-Combination Report of the potential combined impact of the proposed development along with other plans and projects.

The FAC sought additional information from the DAFM in relation to CN82877, querying if i) consideration had been given to potential mitigation measures to protect the environment during the AA screening and ii) whether the proposed project's contribution to in-combination effects had been assessed. In a written response, the DAFM stated that when it first assessed the likely effects of this proposed development on the local receiving environment it did take into consideration standards of good forest practice, and more specifically when applying the AA Procedure then in use to carry out an AA Stage 1 screening in respect of the proposed development, it also took those same standards of good forest practice into its consideration as mitigation measures in terms of their potential to avoid or reduce the likely effects of the proposed development on the integrity of any Natura 2000 sites in view of those sites' conservation objectives. The DAFM stated that if the

application was screened again today, under the revised AA Procedure currently in use, it would not be screened out for Stage 2 AA.

There are three appeals against the decision to grant licence CN82877. The three Appellants raised various issues in their notice of appeal forms but the general concerns are relatively synchronised. The following is a summary of the three Appellants' written grounds of appeal:

- The potential impact on the Little River is not adequately addressed in the licence conditions and the Inland Fisheries Ireland (IFI) response has not been adequately considered.
- There is too much forestry in the area, this proposed development will isolate the adjacent dwelling and increase isolation in the surrounding area.
- Amount of existing forestry means Mayo County Council should be notified.
- Proximity of planned forestry to dwelling boundary. No setback given to old house adjoining Plot 1.
- Fire risk, no public water supply, rivers adjacent to proposed plantation would be harder to access and carry less water in summer due to extra planting. Additional forestry would remove natural fire breaks. Recent fire in the area where evacuation was required.
- Impact TV/Telephone/Broadband signal.
- Roads not suitable for heavy machinery needed for forestry - no suitable access to forest in place, damage to roads will increase wear and tear on locals' vehicles.
- Environmental Impact Statement required as local flora and fauna will be adversely impacted – Frogs, Deer, Hares, Lizards, Hawks, Hen Harriers.
- Local Frog population and Bats in vicinity of nearby old farmhouse protected by Wildlife Act and EU Habitats Directive. No consideration of these species by the DAFM.
- Chemical inputs will pollute rivers.
- Local walking trail – “Shraheens Walk” will be impacted.
- Illegal dumping at forest entrance will become an issue.
- ESB lines should have buffer in place. Water mains on site not taken into account - no buffer included in conditions.
- 32 locals signed petition against this plantation – not considered by the DAFM.
- Planning Act 2000 aims to protect views, amenities, and prospects. This project will not do that.



- Appellant suffers from Fibromyalgia and Chronic Fatigue Syndrome. Neighbours with various ailments. Chemicals and pollen from forest will negatively effect health and dark, gloomy forests impact mental health. Increased GP visits required – extra cost.

The DAFM responded to the Appellants' grounds of appeal in a series of written statements to the FAC. The DAFM stated the following: all submissions received within the allotted timeframe were considered prior to the decision to grant the licence. The Townland of Shraheens is approximately 100ha in total, 39ha of which is currently planted in four plantations; this application will bring the total to 51ha. The application is not in a sensitive landscape area (as per Mayo County Council appraisal) and is visually acceptable and in keeping with landscape and amenity sensitivities. The ERA requires a 20m setback from public roads for conifer trees and 10m for broadleaves. There will be a 20m setback from the aquatic zone, to protect the adjoining feature from any negative impact. The DAFM referred to the areas of the proposed development to be planted with broadleaves and/or contain unplanted setbacks and stated the impact on the dwelling located nearest the application will be mitigated due to the additional broadleaf planting adjoining and the topography of the area with the lands sloping away from the dwelling. Any application of chemicals must be applied as per ERA. Maintenance and repair of the public road is the responsibility of the Local Authority. All ESB and water supply corridors will be respected as per the Forestry Standards Manual. Communications network supply and availability is a matter for the relevant provider.

The Applicant submitted a Natura Impact Statement (NIS) dated 6th August 2020 in support of their application. This NIS was completed after the decision to grant CN82877. The NIS was co-authored by an Ecologist/Environmental Consultant and the Registered Forester who had submitted the application. The NIS screened in the River Moy SAC for Stage 2 AA and stated that, with the precautionary principle in mind, there is a potential for effects on aquatic-dependent qualifying interests (QIs) and their downstream associated habitats and potential disturbance to the Otter.

The FAC held an Oral Hearing on the 7th January 2021. The parties were invited to attend in person or to join electronically. The members of the FAC participated in person and electronically. The Appellants, the DAFM and the Applicant's Representative (AR) participated electronically. The DAFM detailed their approach to processing and issuing the licence. They confirmed four submissions had been received regarding CN82877. They stated that the Mayo County Council had not been

consulted as the project site is not within a landscape sensitive area. They stated that the National Parks & Wildlife Service (NPWS) had not been consulted as the nearest Natura site was outside the distance which would require referral. The application had been field and desk assessed. The three Appellants outlined their issues with the licence approval and reiterated much of their written grounds of appeal. The first two Appellants confirmed that they are the owners of the dwelling which will be immediately bounded by this proposed plantation in the south-east corner of the western group of plots. They stated that their quality of life will be seriously impacted by the proposed development. They stated that they purchased their site without knowledge of the landowner's plans to afforest the surrounding land. The third Appellant lives to the east of the eastern group of plots and is separated by a stretch of agricultural land. The first Appellant queried why the IFI's response had been overruled and why a 20m setback from the Little River was not included as a licence condition. Under questioning by the FAC, the DAFM stated that the ERA must be adhered to and that it contains water setback requirements which factor in slope and soil type. The DAFM stated that, based on the ERA, a 20m setback would be instated in the plot with peat soil which bounds the River Boleyard to the east of the project lands. The nature of the slope between the western section of the project lands down to the Little River was discussed. The DAFM and the AR stated that the slope was not severe but moderate and that there is a flat section between the slope and the river bank. The Appellants contested this and indicated their agreement with the IFI's assessment of the slope as steep and stated that this would lead to water run-off from the site, impacting the Little River. Regarding chemical run-off into aquatic zones, the AR stated that a light spot-spray of herbicide in year one would be applied and that the fertility of the site meant that the site did not need fertiliser. The first Appellant stated that there are numerous Natura sites within 15km of the application site and that the River Moy SAC is downstream with a hydrological connection. They stated that no In-Combination assessment had been carried out and the AA screening was not in line with the Habitats Directive. The DAFM confirmed that the AA screening process at the time used a 3km radius as opposed to the 15km radius currently used. The FAC queried if the aquatic QIs of the River Moy SAC had been considered on foot of the IFI's response. The DAFM indicated that they had not, due to the separation distance of the SAC from the project site (c.4.3km away with c.10km hydrological distance). The DAFM confirmed that the NIS had not been submitted with the licence application and stated that a NIS was not required by the DAFM at that time. The AR indicated that the NIS was undertaken in response to the objections raised relating to the River Moy SAC and that in the intervening period the DAFM's AA screening had changed to consider Natura sites within 15km of application sites. The first Appellant stated that the DAFM Inspector Certification Pre-Approval Report was missing data for the cumulative impact of the



proposed development. The DAFM accepted this data was missing from the Inspector's Certification and stated that these data (percentage of forest cover in the townland/underlying waterbody etc.) are usually automatically populated by the iFORIS system but had not been in this instance. The Appellant indicated that mistakes in the approval process meant the licence should be discarded. They stated that there was a lot of local support for their appeal with 32 people signing a petition against the proposed development. In response to a query from the FAC, the DAFM confirmed that forestry cover in the surrounding area is assessed prior to deciding to approve a licence and that the proximity of an application site to dwellings and the overall percentage cover of forestry in the Townland are factors that DAFM consider. The DAFM also stated that there is not a specific cut-off point in terms of percentage forest cover and that their decision must balance the Applicant's right to plant with the concerns of neighbours. The DAFM stated that, although the Applicant's decision was to plant predominately GPC3 (90% Sitka spruce 10% Additional broadleaves), there are 8 additional rows of broadleaves along the border of the unplanted setback from the house, additional Native Woodland Scheme plots had been included in sight of the dwelling and that the conifer planting is located on the slope falling away from the house. The Appellants asked why the IFI's comments regarding the species to be planted had not been carried over to the approved species for planting. The DAFM stated that the IFI response had been considered but that the choice of species was the Applicant's decision. The issues of road access to the plantation and the suitability of the local roads for forestry machinery/trucks were raised by the Appellants. The DAFM stated that a forest road application would not be submitted until approximately year 15 or 18 after planting to facilitate the first thinning of the forest. They stated that forest roads do not require planning permission, only DAFM approval. The DAFM confirmed, following questioning by the FAC, that appropriate ESB buffers have been applied and that iFORIS shows the mains water supply as running along the public road so that is not an issue in this case.

The FAC queried the Appellant's statements regarding Bats, Frogs, and various other species in the area. The Appellants did not present any specific evidence of the presence of any of these species but referred to the old farmhouse and bat boxes in place in its surrounds.. Regarding landscape sensitivity, the FAC asked the Appellants if they were aware of any relevant policy e.g. within the County Development Plan which supported their grounds related to landscape sensitivity. They did not provide any supporting evidence in this regard. The Appellants stated that the amount of forest cover in the area has led to an increasing sense of isolation which was having a negative impact on

the mental health of local residents. They contended that the proposed development would surround the home of the first and second Appellant's in forestry.

In addressing the grounds of appeal, the FAC had regard, in the first instance, to the grounds relating to the potential impact of the proposed development on the Little River. The FAC observed the IFI's response which stated the Catchment has been allocated good ecological status in the River Basin Management Plan which must be protected. The FAC noted the IFI's statements regarding the importance of the river as a spawning and nursery habitat for salmon and trout in the wider River Moy system, and the river's hydrological connection to the River Moy SAC. The FAC had regard to the IFI's request that a water setback, with a minimum width of 20m, be established along the entirety of the project site's interface with the Little River (and that two rows of Broadleaves be planted outside this buffer). The FAC noted the DAFM included a condition requiring adherence to the ERA, which contains details for water setbacks based on slope and soil type. The FAC also noted the verbal evidence of the DAFM during the Oral Hearing which confirmed that, based on the ERA criteria, the western section of the proposed development, which borders the Little River, would not necessarily be allocated a 20m water setback as the soil is not peat and the slope in that section is less than moderate. Having regard to the nature and scale of the proposal, its proximity to the Little River and the importance of that river as a spawning and nursery habitat for salmon and trout, the FAC has concerns that the recommendations of the IFI had not been given adequate consideration in this particular case.

The FAC considered the grounds relating to the amount of existing forestry in the Townland of Shraheen and the first and second Appellants' concerns that the proposed development will result in increased isolation in the locality and specifically the isolation of their home. The FAC was cognisant of the submission from the AR stating they had endeavoured to make the proposed development less impactful on the adjacent dwelling by opting for Native Woodland Scheme species in the adjoining plots and planning additional broadleaves along the setback from the Appellants' dwelling. However, having assessed the aerial photography of existing forestry in the vicinity and having considered the proposed development's planting plan, the FAC concluded that the proposed development would lead to the surrounding of the first and second Appellants' dwelling with forest cover to the north, south, east and west, potentially resulting in a sense of enclosure or isolation of the Appellants' dwelling. The FAC had regard to Section 6.5.2 of the Forestry Standards Manual (DAFM 2015) which states that where *"the Forest Service considers that the proposed development would have a significant effect on a neighbouring dwelling, e.g. by creating a sense of enclosure or isolation or by blocking significant light or an important view, it may specify local consultation and*



proof of same, as a specific requirement at pre-approval stage. While the prescribed 60m 'without permission' setback will suffice in most cases, the Forest Service may require greater setbacks or indeed, the exclusion of sections of a proposed site, if deemed necessary on landscape grounds." The FAC concluded that the DAFM made a significant error in not addressing the surrounding of the Appellants' dwelling with forestry by specifying local consultation or by extending the dwelling setback/excluding a portion of the application site.

Regarding the grounds of appeal related to the increased threat of forest fires posed by the proposed development, the FAC noted the latter paragraph in Section 6.5.2 of the Forestry Standards Manual (DAFM 2015) which states that Applicants and Registered Foresters should take into account the long-term implications of managing large open areas adjoining properties, and the potential fire hazards associated with scrub encroachment on certain sites. This section states that in some instances, large unplanted setback areas may be considered for exclusion from the Afforestation Scheme. The FAC considers that an additional unplanted setback may have alleviated the Appellants' concerns in terms of isolation and increased fire risk.

The FAC had regard to the fact that the DAFM's procedures in place during the processing of this licence application stipulated a 3km radius for AA screening. However, the FAC concluded that the DAFM's failure to complete an AA screening of the Natura sites within a 15km radius of the project site, prior to making their decision to grant this licence (CN82877), a significant error. The FAC also concluded that the DAFM's lack of consideration for the possible effects of the proposed development in combination with other plans and projects on Natura sites prior to granting the licence was a significant error.

In brief, the FAC considered the remaining grounds of appeal relating to this licence (CN82877). The FAC concluded that the DAFM acted in accordance with its own procedures in terms of referral to the Mayo County Council. The Appellants did not provide any specific evidence in relation to their grounds that Television/Telephone/Broadband signal would be disrupted by the proposed development. Similarly, the Appellants' grounds relating to local wildlife populations were not supported by any specific evidence. Regarding the requirement for an EIA, the FAC is satisfied that the application site does not meet the criteria to trigger an automatic EIA as laid out in statute. The FAC accepts that the proposed development includes the relevant ESB buffers beneath power lines and that the iFORIS information available to the DAFM indicates that there are no water mains present within the project area. In relation to illegal dumping, the FAC found that enforcement actions against illegal waste activity are a matter for the local authorities and the Office of

Environmental Enforcement within the Environmental Protection Agency. Having regard to the grounds of appeal relating to mental and physical health; the FAC found that these contentions were not supported by any specific medical evidence and were not further considered. Regarding the Appellants' submission that the DAFM gave insufficient consideration to the local opposition to this proposed project, the FAC noted that the Appellants' statement that they had collected 32 signatures in opposition to the proposed development. However, no petition was included in the evidence before the FAC. Having considered the grounds relating to chemical pollution of watercourses, the FAC concluded that the planned chemical inputs for the site were not excessive and noted that all users of pesticide products registered for professional use must follow the principles of good plant protection practice in compliance with the relevant legislation. Regarding the impact of forestry machinery on local roads, the FAC was mindful of the fact that establishment operations do not require heavy machinery beyond what is required for residential construction. The FAC considered the submission by the DAFM at the oral hearing that it would be c.15-18 years before truck loads of timber would be hauled from the site and that road maintenance is the responsibility of the Local Authority, not the DAFM. Concerning access, the FAC observed that the granting of a forest road licence is a matter for the DAFM and is typically applied for/granted in the lead up to the first thinning of a forest.

Based on the evidence before it, the FAC concluded that the DAFM made a number of significant errors in the granting of afforestation licence CN82877. As outlined above, the FAC considers the DAFM's approach to AA screening to have been flawed. Furthermore, the FAC considers that the nature and extent of the proposed development could result in the isolation of the first and second Appellants' dwelling. In these circumstances, the FAC decided to allow the appeal and set aside the decision of the Minister.

Yours sincerely,

A large black rectangular box redacting the signature of Luke Sweetman.

Luke Sweetman on behalf of the Forestry Appeals Committee