



[REDACTED]

29 January 2021

**Subject:** Appeals FAC 396/2019, 460/2019 & 484/2019 in relation to licence CN84539

Dear [REDACTED]

I refer to the appeals to the Forestry Appeals Committee (FAC) against the decision by the Minister for Agriculture, Food and Marine in respect of Afforestation approval CN84539.

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

Afforestation licence CN84539 was granted by the Department of Agriculture, Food and the Marine (DAFM) on 25 November 2019.

#### Hearing

An oral hearing of appeals FAC 396/2019, 460/2019 & 484/2019 in relation to licence CN84539, of which all parties were notified, was held by the FAC on 11 January 2021.

In Attendance:

FAC Members:

Mr. Myles Mac Donncadha (Chairperson), Ms. Mary Lawlor & Mr. James Conway

Appellants:

Applicant / Representative(s):

Department Representative(s):

Secretary to the FAC:

[REDACTED]

Not Present

Mr. Martin Regan

Ms. Emma Guerin & Ms Ruth Kinehan

#### Decision

The Forestry Appeals Committee considered all of the documentation on the file, including application details, processing of the application by DAFM, and the grounds of appeal before deciding to set aside & remit the decision to grant this Afforestation (Reference CN84539).

The proposal comprises of 17.93 ha of afforestation at Kilnamaddyroe and Curraghbanania townlands in Ballinamore, Co. Leitrim and involves a change in land use type from agriculture/livestock production to forestry. Proposed species composition comprises of Sitka spruce (7.8ha) and mixtures of Pedunculate Oak and native species including Scots pine, Birch, Holly, oak and Rowan (10.1ha) in 3 blocks. One block being 16.9ha in size separated by a utility line from two blocks of less than one hectare each.

The project area does not fall within any designated Natura 2000 site but is within the 15km zone of the Cuilcagh - Anierin Uplands SAC (code: 000584) located 2.5km to the north west of the project area. The project area borders existing forestry to the north, south and east with agricultural land to the west with an extensive network of hedgerows within the project area. The lands are located along 2 No. public roads (L-5338-0 and 1-5329-0) and have an access point.

The predominant soil types underlying the project area are podzolic in nature. The slope is stated to have slopes of 15% to 30%. The project area does not adjoin or contain an aquatic zone. The vegetation type within the project area comprises grass/rush. The site is located within the WFD Erne Catchment and sub-catchment of Yellow (Ballinamore) (SC 36\_15).



The project was referred to An Taisce and Leitrim County Council, both of whom furnished substantive replies. An Taisce observed that the target Additional Biodiversity Area percentage fell 2.5 percentage points short of the ABE target for this site type and proposed a relevant watercourse identified from online sources should have a setback of 5m if it exists on-site. Leitrim County Council identified that the site lies within a landscape of High Capacity with respect to its ability to accommodate forestry. The relevant section within the County Development Plan (4.7.3) states "These landscapes may be able to accommodate larger areas of woodland, subject to detailed siting and design considerations". Two submissions were received outlining general dissatisfaction with afforestation levels in the county and in the implementation of EU Habitats and EIA directives. The same parties later submitted appeals which raised similar issues (see below).

The Forest Service District Inspector undertook a Stage 1 Screening Assessment (dated On 03 September 2019) in relation to the provisions of the Habitats Directive using the Appropriate Assessment Screening protocol in place at the time. This was later revisited after new guidelines for AA screening were issued by DAFM in November 2019. The inspector reviewed the details of the Natura 2000 site within 15km of the project, including its qualifying interests and conservation objectives, and supporting habitats and species. The inspector concluded that the project could be screened out because of the absence of any aquatic zone within or adjoining the project area and the absence of any significant relevant watercourse(s) within or adjoining the project area. This conclusion was based on consideration of the nature, size and location of the project (including associated operations and ancillary works), potential negative consequences, both immediate and into the future, potential pathways, the sensitivity of the ecological receptors (i.e. the qualifying interests & associated conservation objectives, and supporting habitats & species, as reviewed), and possible in-combination effects with other plans and projects. An in-combination report was not compiled to be used in the licencing decision.

DAFM issued its technical approval on 25 November 2019. The standard afforestation conditions are imposed in addition to plant, where appropriate, an added 3 rows of broadleaves beside each hedgerow on the site; conifers kept back at least 30m from the public road and to accommodate the water main present on the site.

There are three appeals against the decision. The first appeal alleges inappropriate application of Habitats and EIA directives, lack of adherence to Appropriate Assessment procedures and a failure to address the cumulative effects of forestry in the area since 1989. The second appeal outlines grave concerns regarding the increase in forest cover generally in the area and county. There is a lack of confidence in the application of Appropriate Assessment processes and the protection of biodiversity. The appellant also considers the application to be in conflict with the county's Strategic Environmental Assessment (SEA). The third appellant raises issues around mapping, flood risk assessment, hydrological connectivity to a proposed NHA and the lack of proper engagement with the answer of 'somewhat applicable' to the EIA screening question as to the scale and significance of forest cover in the locality. Errors in the estimated elevation and lack of calculation of extent of existing forest cover are also highlighted. The approach to Areas of Biodiversity Enhancement is criticised. The site is proposed as candidate High Natural Value farmland and needs to be treated as such. Habitats directive Annex IV species are also not sufficiently protected.

In a statement to the FAC, the DAFM responded to the grounds of appeal stating that the decision making process was correct in this case. Some details regarding elevation, flooding and mapping are also addressed. Hydrological connectivity to a proposed NHA is discounted as an issue as there is no EPA designated stream or aquatic zone mapped on the site. During the hearing DAFM clarified to the FAC that no in-combination assessment was undertaken. The appellants' in attendance advanced their written grounds of appeal and contended that Hen Harrier nested in the townland of Curraghnabania in 2020, at a distance of c2km from the proposal area, and that this was notified to the NPWS and Golden Eagle Trust, and raised concerns about the impact of possible future operations on the site.

The FAC had regard to the record of the decision under appeal and the submitted grounds. The Northern Ireland SAC 'Cuilcagh Mountain' (Code UK0016603) is approximately 12.5 kms from the project and was not included in the AA Screening process. While the biomap appears to incorrectly record the direction of



drainage as northwards from the site, approximately 17 hectares of the site appears drain southwards into a separate stream catchment to that of the Cromlin Bridge Wood proposed NHA, leaving less than one hectare that may be hydrologically connected although there is no mapped evidence of a watercourse. It is also relevant that minimal site cultivation and drainage works are planned and the proposed tree cover will comprise over 50% broadleaf or native species. The Biomap states that all hedgerows and existing trees will be retained and a condition of the licence is to retain all hedgerows and where appropriate enhancement is outlined. The site is not within an Natura 2000 site or within 15kms of such a site for which Hen Harrier is a qualifying interest and at the time of making the decision DAFM had no evidence from NPWS via their usual mapping queries that the species was of concern for this area. The FAC noted the reported sighting of Hen Harrier nesting locally in 2020 was after the DAFM issued the licence under appeal, in addition no definitive evidence was provided to the FAC of the presence of any protected habitats or species on the land or of the verification and recording of a Hen Harrier Nesting Area locally by a prescribed body. The legislative protection for High Nature Value land (HNV) farmland in Ireland is confined to restrictions on certain activities on protected sites; the site at appeal is not such a site. Possible future operations such as thinning and clearfelling of this site are not approved under this licence and would have to comply with the legal requirements in place at that proposed time.

The EU EIA Directive sets out in Annex II 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 Regulations, in relation to forestry licence applications, require the compliance with the EIA process for applications relating to afforestation involving an area of more than 50 hectares, 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 considerably sub-threshold for the mandatory submission of an EIA report. The DAFM desk and field assessed the proposal and considered the application across a range of criteria, including water, designated areas, landscape and cumulative effects, and determined that the project was not required to undergo the EIA process. Having regard to the record of the decision and the submitted grounds and the nature, scale and location of the proposal (including the county development plan categorisation of the area as being of High Capacity for forestry) the FAC is satisfied that the proposal would not result in any likelihood of significant effects on the environment and that the DAFM did not err in the decision regarding EIA.

Based on the information before it however, the FAC considered that the requirements of the Habitats Directive in respect of Stage 1 screening for appropriate assessment were not satisfactorily met prior to the granting of the licence. The FAC considers, there was an absence of consideration of UK Natura 2000 sites at a distance of less than 15km from the proposal area and there is no evidence that possible in combination effects with other plans and projects in the vicinity were considered. The FAC considers these factors comprise a significant error in the making of the decision to grant the licence. In such circumstances, the FAC decided the decision of the DAFM should be set aside and remitted to the Minister to carry out a screening for appropriate assessment (including in-combination analysis) of the proposed development under the requirements of Article 6 of the Habitats Directive before making a new decision in respect of the licence.

Yours sincerely

A large black rectangular redaction box covering the signature of the FAC representative.

---

Mr. Myles Mac Donncadha (on behalf of the FAC)

