



15 April 2021

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FAC refs: 281/2020, 296/2020, 297/2020, 298/2020, 299/2020, 300/2020, 301/2020 & 302/2020

**Subject:** Appeals in relation to afforestation licence CN84418

Dear [REDACTED]

I refer to the appeals to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine (DAFM) in respect of afforestation licence CN84418.

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

Licence CN84418 was granted by the DAFM on 25 May 2020.

#### Hearing

An oral hearing of appeals 281/2020, 296/2020, 297/2020, 298/2020, 299/2020, 300/2020, 301/2020 & 302/2020 was conducted by the FAC on 04 March 2021.

#### Attendees:

<b>FAC Members:</b>	Mr Des Johnson (Chairperson), Mr Luke Sweetman, Mr Dan Molloy & Mr Pat Coman
<b>Secretary to the FAC:</b>	Mr Michael Ryan
<b>DAFM representatives:</b>	Mr Jahn Crane & Ms Mary Coogan
<b>Appellants:</b>	[REDACTED]
<b>Applicant:</b>	[REDACTED]
<b>Applicant representative:</b>	[REDACTED]

#### Decision

The Forestry Appeals Committee (FAC) considered all of the documentation on the file, including *application details, processing of the application by DAFM, the grounds of appeal, submissions made* at the oral hearing and all other submissions before deciding to set aside and to remit the decision to grant this licence (Reference CN84418).

The proposal is for 24.47 ha of afforestation and 1600m of stock fencing at Breaney, Co Longford. The proposal is in 2 plots, plot 1 of 23.49ha to comprise Sitka spruce 85% and additional broadleaves 15%, plot 2 of 0.98 ha to comprise Norway spruce 85% and additional broadleaves 15%.

The proposal is located within the Upper Shannon catchment and the Inny (Shannon)\_SC\_050 sub catchment, and the Inny\_080 waterbody. The Lyanmore River flows along the eastern boundary to south/south-east. The DAFM certification states the predominant soil type underlying the project area is podzols in nature. The slope is predominantly flat to moderate (<15%). The project area is crossed by / adjoins an aquatic zone(s). The vegetation type(s) within the project area comprise wet grassland and hedgerows. Ground preparation involves woody weed removal and mounding and planting is by the slit planting method. There is no fertiliser requirement, no drainage is required, and there is provision for manual herbicide application in years 1 and 2. There is existing access to the proposal per the Certification.

The application was both desk and field assessed by the DAFM. The Certification included an assessment to determine any EIA requirement and no EIA was deemed required. The Inspector noted there were, including this proposal, 24.47 ha of afforestation within a 500m radius of the proposal site within the past 3 years, the application townland will have 20.29% afforestation, and the underlying waterbody will have 3.54% forest cover. There were five submissions received during processing. There were referrals of the application to An Taisce and to Longford County Council, with only a reply from the County Council evidenced. The County Council response (10 Sept 2019) was an expression of enquiry and concern regards access-extraction points for this proposal – citing an issue with regards access point being sought 15 – 20 years later and then causing destruction of ancient hedgerows and being contrary to County Development Plan aims. The County Council sought mapping evidence of access points, asked would there be amenity access and asked if the proposal could be linked to any existing Forest Roads to reduce a requirement to open new access points. There is no evidence of a DAFM response to the Local Authority.

The DAFM Inspector carried out an Appropriate Assessment (AA) screening with reference to the provisions of Article 6(3) of the Habitats Directive, identifying Natura 2000 sites within 15km of the project lands and all 7 Natura sites were screened out. The European designated sites are as follows; Ardagullion Bog SAC, Brown Bog SAC, Garriskil Bog SAC, Garriskil Bog SPA, Glen Lough SPA, Lough Iron SPA and Mount Jessop Bog SAC.

***Reasons for screen out of sites include;***

- *The position of the project area downstream from the Natura site, and the subsequent lack of any hydrological connection.*
- *The project area is x km from SAC and will have no effect on the qualifying interests.*
- *The absence within and adjacent to the project area, of any habitat(s) listed as a qualifying interest of the Natura site.*
- *The unsuitability of the project area for use by any species listed as a qualifying interest of the Natura site.*
- *The project area is x km from SPA and beyond the foraging range of the qualifying interest.*

An in-combination assessment was completed 20 April 2020, and listed 92 planning permissions from 2015 to 2020 including dwelling houses and dwelling extensions, agricultural building and slurry storage unit, telecommunication mast, solar farms, and business extensions etc. From the EPA there were 3 wastewater treatment facilities. Other forestry related projects comprise 53 afforestation





projects from 2005 to 2020, 21 Forest Road projects from 2008 to 2020, 22 private felling projects from 2017-2019, and 39 Coillte felling projects. The FAC notes some licence numbers are repeated.

The licence was issued with works to be completed by 25 May 2023. The licence comprises what are relatively standard conditions and the following additional conditions: -

- *Adhere to Forest Archaeology Guidelines and attached specific conditions,*
- *Dwelling Houses/Buildings Setback 60m,*
- *Adhere to Environmental Requirements for Afforestation*

Specific Archaeological Conditions:

*Archaeological exclusion zone/setback 20m in radius around each of the ringforts (LF 019-079/080), as illustrated.*

*Fencing, plus access.*

*No deep drains within 30m*

*10m wide unplanted buffer zone/setback around the any surviving upstanding remains of the demolished historic farmhouses (wall footings etc) and other buildings, and 5m wide unplanted buffer zone/setbacks around any attached infields, as illustrated.*

*(archaeological report and illustrative map were issued with further details).*

There are 8 appeals against the decision to award the licence CN84418, the following are the grounds raised;

**281/20;** The decision does not comply with the Habitats Directive, the Birds Directive and the Environmental Impact Assessment Directive. The test for Appropriate Assessment Screening in Irish and EU law is that it is, merely necessary to determine that there may be such an effect. Rather than to state that it will not have a significant effect. If the development which is within 15km of a Natura 2000 site it has been screened in.

Case C-323/17 - in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site.

36 & 38 - must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the proposed works on the protected site concerned. i.e. If it is said to be in a different catchment, the screening must state the catchment that the application is in. It is also necessary to realise that Birds can fly they do not all rely on watercourses to move.

A map showing the SACs and SPAs and the site of the proposed development should be attached.

Environmental Impact Assessment, it is necessary to give details of all forestry in the area and show that the cumulative afforestation does not exceed 50ha. Also, it is necessary to give the total km of the forest roads in the area and show that no roads which are not included in the application will be needed to carry out this development, that includes thinning and clearfell.

The appellant also set out regards obligations on the FAC.

**296/20;** Fears value of dwelling and farm will suffer. Fly-tipping dumping goes with forestry on quiet roads. Will disrupt light and views on me as proximate to their house. Hedges will not be kept (maintained?) as can be seen on remainder of road where there is forestry

**297/20** maps provided indicating land left out and incorrect land in. **298/20** map provided. **299/20**

**301/20;** The accuracy of the ordnance survey and grounds highlighted for approval are inaccurate and question the integrity of entire application. Firstly, all maps and plans outlining the approved grounds



are incorrect as it includes two areas (*see attached, figure 1*) which belongs to a different landowner and have not been granted approval. Secondly, over 4 hectares of forestry on the L5183 road has been omitted from all maps and ordnance surveys provided (*see attached, figure 1*) this also questions the accuracy and integrity of assessments carried out on this application. This additional forestry subsequently increases the total percentage of forestry within the area.

This site is accessed through the L5183 road which is 3.5 meters in width. This is too narrow to accommodate the size and volume that such a development would require. The current condition of this road is also not suitable for the demands of this project. Numerous failed representations made to local authorities to upgrade the conditions of this road.

The entry points of the approved lands are situated in two high traffic and sharp bends on the road. The prospects of forestry machinery accessing the road at these points endangers road users, residents and the multiple children living in close proximity to the site.

The road where the site is located is 2.9km in length and is highly populated with twenty-two current households and eight non-resident landowners who are actively farming in this area. This development fails to consider the physical and mental health, wellbeing, and quality of life of these residents and their future generations. Along with the issues outlined above, this development lacks any commitment, contribution, or economic benefit to our rural community.

**300/20;** maps provided; maps are inaccurate. They do not show all of the forestry currently planned. With the current forestry on the road there is dumping of household waste and electric waste. The road is unsuitable for forest machinery and this will also be a hazard. There are a lot of young children local to this proposal, changes will occur to their health and wellbeing, this is a concern. The L5183 is 3.5m in width, is unsuitable, is very narrow, lot of families and school traffic on the road

**302/20;** the appellant depends entirely on a private water supply which is situated directly in front of the property being planted. In later years there will be pollution caused by illegal dumping.

In response to the grounds of appeal the DAFM set out the following;

**281 20;** CN84418 was screened for AA and resulted in the following considerations: 7 Natura 2000 sites were located within 15km of project area (Mount Jessop Bog SAC – 8.1km, Ardagullion Bog SAC – 11.7km, Garriskill Bog SAC & SPA – 13.2km, Brown Bog SAC – 13.8km, Glen Lough SPA – 5.9km, Lough Iron SPA – 12.4). None of these areas are hydrologically connected to the project area, nor will they have an effect on any of the qualifying interests (ref habitat and bird tables). There is a hydrological connection between Lough Ree SAC and project area, but this is approximately 30km away and will have no effect on any of the qualifying interests (ref bird and habitat tables). The project was assessed for any in combination effect with other projects in the vicinity (see report in contacts dated 22<sup>nd</sup> April 2020). Due to the lack of hydrological connection and the distance separating the project area from the Natura 2000 sites, it was concluded that the project will have no effect to any Natura 2000 sites and can therefore be screened out.

**296/20;** The impact of afforestation on surrounding land/property is difficult to assess and may have a positive effect on property prices as well as a negative effect. Illegal dumping is not a problem solely related to forestry areas and may happen anywhere. All cases of illegal dumping should be reported to Garda and local County Council. The Environmental Requirements for Afforestation require unplanted areas adjacent to roads (10-20m) and dwellings (60m) to ensure adequate light levels are maintained. It is the responsibility of landowners to maintain roadside hedges and trees (Section 70 of Roads Act 1993). After considering the Grounds of Appeal no change to the conditions of Approval is recommended.





**297/20 298/20 299/20 301/20;** 'Attached Map (Figure 1)' referred to in Grounds of Appeal highlights two areas, one outlined in Yellow and the other in Red. The yellow area is an existing afforestation and is recorded on IFORIS and included within the % afforestation figures. The area outlined in Red is not owned by applicant, but the applicant has been in consultation with the landowner regarding a swap for another area of land. No agreement has been reached as far as I am aware. The adjacent county road is adequate for the proposed forestry operations. All road users have to adhere to the rules of the road and any restrictions placed on the road by either the Garda or Local Authorities. All current entry points to the proposed afforestation area have been historic entry points and will remain so. Any change to these entry points will be subject to licence approval by the relevant authority in accordance within the relevant Legislation. All road users will have to abide by the rules of the road. Forests offer many public services such as; Carbon Sequestration, air quality, timber production, rural jobs, biomass for energy, forest ecology etc.

**300/20;** The maps attached to the application for afforestation CN84418 refer to the proposed planting area only. The Forest Service will examine other forestry areas outside CN84418 and other projects within the area. Illegal dumping is not a problem solely associated with Forest areas. All incidents of illegal dumping should be reported to the Garda and the local authorities. The county road adjacent to the proposed afforestation area is adequate for the proposed forestry operations. All road user must adhere to the rules of the road and any restrictions placed on that road by the Garda or the Local Authorities.

**302/20;** The issue raised were not mentioned in the appellant's submission to the DAFM dated 28<sup>th</sup> July 2019 and no information relating to the exact location or type of water supply has been provided. The assumption has been made that the water supply is located on appellant's property and not within the proposed afforestation area. There will be no drainage, ground disturbance or planting within 60m of the appellant's dwelling therefore there will be no change to the existing movement of water between proposed planted area and the property. The afforestation proposal is for no fertiliser to be applied and for herbicide to be applied in years 1 & 2 after planting. The issue of illegal dumping may be a problem anywhere and is not a forestry related problem. Any illegal dumping should be reported to the Garda and to the local county council. Considering the Grounds of Appeal, no change to the Conditions of Approval for CN84418 is recommended.

The FAC held an Oral Hearing on 04 March 2021. The parties were invited to attend in person or to join remotely. The applicant and their representative participated remotely. One appellant (297/20) participated remotely and the DAFM representatives participated remotely, the other appellants did not participate, and the FAC sat in person and remotely at this hearing. At the hearing the DAFM described the processes involved in considering the application, that there were referrals to An Taisce and to Longford County Council and a reply was received from the County Council. There was also an internal referral to an archaeologist. There were 5 submissions received in respect of the application. The application was subject to an AA screening and all Natura 2000 sites within a 15km radius were screened out for Stage 2 AA. The DAFM confirmed the application was desk assessed against spatial layers on the DAFM's IFORIS system with regard to protected sites, water quality, Hen Harrier, Freshwater Pearl Mussel, and archaeology amongst others. The DAFM confirmed the proposal site was also field inspected prior to any decision to issue the licence. The appellant stated their concerns



were set out in their appeal, this included water quality, fly tipping – which is already an issue - is increasing and will escalate further with this proposal, also, there is forestry already in place which is not reflected in the afforestation application, the public road is a 3<sup>rd</sup> class link road and does not have capacity for the traffic and loads involved, and there are 2 substantial bends on this road. There are 12 to 14 houses on the road which is in everyday use by people, including school traffic, as well as used for walking. The proposal is of no benefit to anyone except the landowner who does not reside there, and once planted the owner will have little more to do with it but they (the locals) will have to live with the forestry. The appellant had no objection to forestry but only at suitable locations which this is not. In response to a question from the FAC regards an increased proportion of broadleaves the appellant could not make a call on such without first seeing what that would involve. The appellant stated that when clear-felled the proposal will be a wilderness for a number of years, not a realistic environment to have to live with. There will be a loss of residential amenity and fall in value of houses. The appellant described the slope and elevations, and the location of their own property. The appellant stated that currently as farmland the site received very little regards fertiliser or slurry. The appellant while unable to comment regards any land swap, did state that the omission of any planting in the south west field might make the application more agreeable. The applicant gave the background to his acquiring the land and the management decision behind the afforestation, also that this was considered beneficial regards the environment and regards carbon sequestration. The applicant's representative confirmed there was a commercial aspect to the planned planting of Sitka spruce but that there would also be 6,500 broadleaf trees which would also be used to screen the conifers, screen setbacks from houses and rivers and the archaeological setback, also 2 rows would be used alongside weak hedgerows, and there would be an attempt to mix the species of broadleaves achieving different heights, textures and food sources. There would in addition be a 5m setback from each of the 4 hedgerows on site. The proposal would not require fertiliser, there would only be manual application of herbicides in first 2 years, which is a small amount of chemical over a c. 30 years plantation. The DAFM confirmed the access required to ringforts can include hedgerow set backs in this instance. The DAFM in response to the FAC confirmed a specific area within what is licensed which is not owned by the applicant. The applicant described how a land swap was offered but was not responded to by another party. It was confirmed by the applicant and the DAFM that this 'other' land, which comprises 2 fields at the southeast, is included in the application and what was assessed in granting the licence. In response to the FAC the DAFM confirmed the value for percentage of forest cover provided was subject of a technical glitch but that there are 24.47 ha of forestry within a 500m radius and this was considered in the processing and assessing any requirements regards EIA Directive. The appellant confirmed to the FAC there is currently no forestry traffic on the public road and confirmed there are milk collection traffic to dairy farms on the road. The DAFM referred to Government policy which is to increase forestry cover, ensuring forestry goes in the correct places with the correct species used, and when managed well is good for the environment, with broadleaves used at the site locations best suited to them, by placing them along the road setbacks they would long outlast the first rotation of conifer woodland.

In addressing the grounds of appeal, the FAC considered, in the first instance the requirements regard the EIA Directive. The proposal was the subject of an assessment to determine EIA requirement by the DAFM on the IFORIS certification system as evidenced. The EU Directive sets out, in Annex I a list of projects for which EIA is mandatory. 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. Neither afforestation nor deforestation (nor clear-felling) are referred to in Annex I. Annex II contains a class of project specified as "initial afforestation and deforestation for the purpose of conversion to another type of land use". (Class 1 (d) of Annex II). 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 application is sub-threshold for mandatory EIA, the evidence suggests a total area of 24.7 ha is afforested within a 500m radius within the last 3 years, there is in addition existing older forestry in the surrounds some of which was the subject of a thinning licence in 2019, but there is also agricultural grass in the immediate circumference of the proposal at all sides except for the public roadside. The location is rural with a number of private houses and farmyards in the immediate vicinity and borders a public road. The application will be subject to the mandatory setbacks per the Forestry Standards Manual 2015. The proposal is not within or adjacent to any nationally designated site and is not within any high amenity landscape. The archaeology sites are addressed in the licence, and the licence is issued subject to compliance with the DAFM guidelines and requirements for landscape, harvesting, water quality, bio-diversity and archaeology. The proposal is bordered along its eastern side by the Lyanmore River which is part of the Inny\_080 river waterbody for which the WFD status is given as 'good' (EPA website). Based on the foregoing, the FAC is satisfied there is no likelihood of significant effects arising on the environment and that there is no breach of the EIA Directive in this instance.

The Lyanmore river along the east of the proposal is identified on the application maps as being afforded a 10m setback. The Environmental Requirements for Afforestation (2.8) (DAFM) requires a 10m aquatic set back where there is non-peaty soils and flat to moderate slope, the soils per the National Soils (EPA website) are acid brown earths on most of the southern part, then brown podzolics, and there are surface water gleys, ground water gleys on the remainder, and the slope is moderate to flat. Per those guidelines all new drains must terminate outside of the water setback.

The FAC considers the licence does not contain a requirement to apply rows of broadleaves along the edge of the afforestation to the water set back or to the other set backs such as dwellings, archaeological sites, public roads and hedgerows, and based on the evidence from the hearing, and in the particular circumstances of this case, the FAC considers the licence should specify requirements for the planting of broadleaves with reference to rows, locations and the use of forest edge planting considerate of the location.

The application was subject of a referral to the Local Authority which gave rise to a response seeking replies to a number of questions from the Local Authority. The FAC considers that while the application bio-map indicated two access points marked A, one at each periphery of the site along the L5183, there is no evidence before the FAC that questions raised by the Local Authority, the referral body, were addressed to allow for a comprehensive referral response. While the FAC is aware that any forest road would require a licence and would be subject to the application processes for any development,



the FAC is cognisant that the referral process is incomplete regards the Local Authority and the Local Authority had apparently, as a result, not yet addressed the application regards the public roads at the time of the decision to grant the licence. Based on the foregoing, and having regard to the concerns expressed in the appeal, the FAC considers this to be an error in the making of the decision to award the licence.

Under Article 6(3) of the Habitats Directive, any plan or project not directly connected with or necessary to the management of a European site, must be subject to an assessment of the likely significant effects the project may have on such a designated site, either individually or in combination with other plans or projects, having regard to the conservation objectives of that designated site. In this case, the DAFM undertook a Stage 1 screening in relation to 7 Natura 2000 sites as evidenced on the IFORIS certification pages with all European sites screened out for Stage 2 AA and an in-combination screening is also evidenced as compiled 20 April 2020, and for each site the DAFM concluded *"AA Screening has been carried out in accordance with S.I.477 of 2011 (as amended) and S.I.191 of 2017 (as amended). The project is not directly connected with or necessary to the management of any European Site. Furthermore, 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 this European site"*. The DAFM screened for each European Site within a 15km radius of the proposal and the FAC, having regard to the downstream distance c. 33km to Lough Ree SAC and Lough Ree SPA, is satisfied there was insufficient basis to extend the 15km radius in this instance. The FAC considers there is no breach of Article 6(3) of the Habitats Directive and that the screening conclusion on which the decision to grant the licence CN83246 is based is reasoned and sound.

Regards the grounds of appeal and the application maps and area licensed of 24.47 ha, the FAC is satisfied that the area is overstated by the inclusion of both fields to the southeast. The outcome of this inclusion is that the area of broadleaves identified on the licence of 3.52ha and the number of broadleaf trees described at the hearing 6,500 are likely attributed to the larger area and not the actual area available, likewise with the conifer content. The FAC considers it was erroneous to include lands other than what was available to the applicant on the application.

Regards the contention the licence is contrary to the Birds Directive. No specific evidence has been submitted in respect of the presence of Annex IV species or other bird species, or reasons why the proposed development would threaten their protection. In these circumstances, the FAC concludes there is no related reason on which to affect the decision.

Fly tipping / illegal dumping is a matter for the attention of the Local Authority should it arise. Maintenance of roadside hedgerows is a matter for every landowner with or without afforestation. The FAC is cognisant of the public road set backs in the Forest Standards Manual 2015 that apply to the proposal; 10m for broadleaves and 20m for conifers.

House value effects, a concern in some of the written appeals, are not evidenced and do not comprise grounds on which the FAC can base a determination in the context of the licensing decision at appeal. The positioning of the private water supply (appeal 302/20) is not stated, the FAC notes the appellant's dwelling, per Eir code, is located across the L5183 from the northwest of proposal. The Environmental Requirements for Afforestation (2016) afford a setback distance of 5m from an abstraction point of





**An Coiste um Achomhairc  
Foraoiseachta**

Forestry Appeals Committee

any surface waters, borehole, spring or well used for the abstraction of water for human consumption in a water scheme supplying 1 m<sup>3</sup> or less of water per day or serving 10 or less persons. Based on the available information, especially the separation distance and the mandatory public road setback applicable to the proposal, this set back is more than met.

Per the Forestry Standards Manual (DAFM 2015) the setback distance from dwelling houses and associated buildings is 60 metres (or 30 metres with the *written* consent of the owner), having regard to landscape and surrounds the FAC considers there is insufficient basis on which to affect the required setbacks.

In the circumstances outlined above, and based on the evidence before it, the FAC concluded that the DAFM made a series of errors in their decision to issue afforestation licence CN84418. The FAC has decided to set aside the licence and to remit to the DAFM to re-engage with the Local Authority referral facility and to consider any referral response in any new licence, to also reflect the correct lands of the applicant on any new licence, and to specify regards the use of broadleaves on any new licence.

Yours Sincerely

Pat Coman, on behalf of the FAC



