



An Coiste um Achomhairc  
Foraoiseachta  
Forestry Appeals  
Committee

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

26<sup>th</sup> April 2021

**Subject:** Outcome of appeal regarding licence CN83466

FAC007/2020, FAC008/2020, FAC009/2020, FAC010/2020, FAC011/2020, FAC012/2020,  
FAC013/2020, FAC022/2020, FAC024/2020, FAC397/2019, FAC407/2019, FAC408/2019,  
FAC414/2019, FAC415/2019, FAC416/2019, FAC417/2019, FAC418/2019, FAC419/2019,  
FAC420/2019, FAC421/2019, FAC422/2019, FAC423/2019, FAC472/2019, FAC473/2019,  
FAC481/2019, FAC485/2019, FAC486/2019

Dear [REDACTED]

I refer to appeals made 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 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 CN83466 for afforestation of 10.13 ha at Drumgeaglom and Mackan, Leitrim Village, Carrick-on-Shannon, Co. Leitrim was approved by the Department of Agriculture, Food and the Marine (DAFM) on 6<sup>th</sup> December 2019.

**Hearing**

An oral hearing in this case was held by a division of the FAC on 22<sup>nd</sup> March 2021.

**In attendance at Oral Hearing:**

FAC Members:

Mr. Myles Mac Donncadha (Chairperson), Mr. Seamus Neely, Mr Derek Daly and Mr. John Evans.

Secretary to the FAC:

Ms. Emma Guerin, Ms. Heather Goodwin (Observer).

An Coiste um Achomhairc  
Foraoiseachta  
Forestry Appeals Committee

Kilminchy Court  
Portlaoise  
Co. Laois  
R32 DTW5

Fon/Telephone 076 106 4418  
057 863 1900

DAFM representatives:

Ms. Mary Coogan and Mr. Seppi Hona.

Appellants:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

## Decision

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notice of appeal, submissions received, and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to vary the decision of the Minister regarding licence CN83466.

The licence pertains to the afforestation of 10.13 ha at Drumgeaglom and Mackan, Leitrim Village, Carrick-on-Shannon, Co. Leitrim. The site is described as having a predominant soil type that is podzolic in nature, is crossed by / adjoins an aquatic zone and is predominantly flat to moderate (<15%) in slope. The plan for this site indicates (approximately) an open area (including all specified setbacks) of 18%, Sitka spruce (41%), Oak (28%) and native Birch and Scots pine (12%). The site is located in the Upper Shannon WFD Catchment (Code 26A) and sub-catchment Shannon [Upper]\_SC\_020 (code 26A\_3). The sub-basin is labelled SHANNON (Upper)\_040 and the waterbody to which the site drains (on the northern boundary) is also labelled SHANNON (Upper)\_040 (Code IE\_SH\_26S020500). This waterbody has a status of 'Moderate' per the 2013-2018 WFD Status assessment.

The site was initially desk assessed and was also field assessed by the DAFM Inspector on two occasions (3<sup>rd</sup> April 2019 and 22<sup>nd</sup> November 2019) and the application was referred to Leitrim County Council and to An Taisce. The area proposed for afforestation contains one Recorded Monument (a megalithic structure, LE027-138). This prompted a request by DAFM on 9<sup>th</sup> April 2019 for an Archaeological Assessment to be provided by the applicant. On 10<sup>th</sup> October such an assessment was received, reviewed by DAFM Archaeologist and recommended conditions were referred to National Monuments Service (NMS) on 14<sup>th</sup> November 2019. The conditions include exclusion from planting of approximately 0.5 hectares of the plot where the monument is recorded (there being no visible trace of the monument a precautionary approach is taken as to its exact location); a 20m radius of exclusion at another location where large stones were found in a hedgerow; a specific condition highlighting that all field boundaries are to be preserved; and archaeological monitoring to be undertaken by a suitably qualified archaeologist retained at the expense of the applicant during ground preparation and drainage works. NMS communicated agreement with these recommended conditions on 15<sup>th</sup> November 2019.

The DAFM undertook a screening for Appropriate Assessment which identified three European sites within 15km and the Likely Zone of impact was not extended to include further Natura sites in this case. All three sites (Cuilcagh – Anierin Uplands SAC 000584, Lough Arrow SAC 001673 and Lough Arrow SPA 004050) were screened out for the purposes of Appropriate Assessment because each lies upstream of the proposal site and in the case of the SPA in particular, distance was cited as an additional reason (the SPA lies approximately 14.5 kms from the proposal site). Planning, forestry and other data sources were consulted on 21<sup>st</sup> November 2019 to assess the potential effect of this

proposal in combination with other activities in the vicinity and such an effect was ruled out as the project itself was deemed to not represent a source. An Assessment to Determine EIA Requirement concluded that EIA would not be required in this case based on an assessment of the probability of impact; duration, frequency and irreversibility of the impact; the combined impacts and interactions; and the magnitude and complexity of the impact.

A response was received from Leitrim County Council on 3<sup>rd</sup> April 2019 that observes how one of the proposed access points appears to serve a different block of forest and a second access point appears to serve an existing dwelling. It goes on to confirm that the lands are not in any areas designated in the County Development Plan 2015-2021 and that the area is classed as having 'Medium Capacity' to accommodate forestry which states that *these landscapes may be able to accommodate new small scale woodlands provided that their scale, siting and species are in keeping with landscape character*. Attention was also drawn to the presence of a national monument (reference LE027-138) on the site and the fact that any widening or improvement works to existing entrances are not exempted development under the Planning and Development Act 2000-2018.

A response was received on 2<sup>nd</sup> December 2019 from An Taisce which observed (based on imagery contained on the archaeology.ie website) the presence of additional 'relevant watercourses' which, per the Forest Service Environmental Guidelines (2016), require a setback of 5m. The response also draws attention to the correct buffer zone on the stream to the north of the site being 10m rather than the 5m stated in the application biomap.

Twenty seven appeals were lodged in relation to this application. Included in the grounds were assertions that, the presence of Natura 2000 sites within the 15km zone of concern should have triggered Appropriate Assessment; the percent forest cover in the townland is much higher than the zero percent seen in the DAFM certification report; the site is in the catchment of a Local Authority Group Water Scheme and is greater than 10 hectares and as such a different answer should have been given in the Inspectors Certification report; herbicides will be used on the site and its not clear where or how they will be spread (and if they will enter the River Shannon); that the run-off from site will be within 4km of water extraction point for Carrick-on-Shannon; the lack of proper consultation; the area is a foraging ground for bat and otter; fire risks have not been managed; views should be preserved; NMS have not been consulted; lack of protection for Drumhierney Woods and other NHAs and pNHAs; there is a risk to proper forest growth and silviculture from flooding and this was not identified; the northern end of the proposed site is included in flood risk mapping whereas the Inspectors Report states that the site is not subject to flooding; the site is in an active flood plain and gets flooded for many months of the year (estimates vary between 6 and 10 months); the aquatic zone setback at the northern site boundary should be 20m because Teagasc soils maps show land as "peat"; the biomap does not reflect the required setback of 5m between plots 48814430 and 48814421; negative impact on recreation; there is non-compliance with the standard road setback of 10m for broadleaf and 20m for conifers; the lands cannot be accessed without relocating the planned access points which will require Planning Permission from the Local Authority; the application is in conflict with Co. Leitrim and Co. Roscommon Strategic Environmental Assessment (and all those straddling Shannon) and Leitrim Water Quality Policy.

The grounds of appeal listed above is a summary of those on the public file, the full contents of which was available to the FAC for its deliberations, which focussed on those grounds which were relevant to the decision made. As recorded above, many of the appellants were able to attend the oral hearing (or had representation at it) and they were briefed by the chair that they would be given the opportunity to emphasise or expand on their grounds of appeal during the hearing.

In its written response to the appeal, DAFM states that the decision was issued in accordance with DAFM procedures, SI 191/2017 and the Forestry Act. It also states that DAFM is satisfied that all criteria as outlined in the standards and procedures that follow (in the statement) have been adhered to in making a decision on the application. Responses are included for each of the appeals, include a confirmation of the Assessment Criteria Used and a consideration of possible in-combination effects.

At the Oral Hearing the DAFM clarified that the applicant had furnished an Archaeological Impact Assessment as requested and that a list of recommended conditions were agreed between the DAFM Archaeologist and the National Monument Service. However, the text of the licence did not appear to reflect this fact and DAFM read into the record of the Hearing the conditions agreed with NMS on 15<sup>th</sup> November 2019 (which are reproduced above). In his opening contribution to the Oral Hearing the DAFM Inspector explained that he had considered the various submissions made (which total 44 in all) during his decision making. Many of these submissions cited the frequency with which the proposal area is flooded and the inspector specifically scheduled a field inspection during the winter season as a result. The inspector concluded that internal drainage was impeded on the site, particularly for drains running east-west connecting to a land drain running northwards, stating that on both occasions when he visited the level of the main drain was 2m lower than the ground level on the site, indicating that any accumulated surface water could have escaped had the drainage system been fully maintained, a situation that would be corrected during the course of establishing the trees on the site to ensure positive flow of water off the site to the canal. The Inspector drew attention to the relatively high proportion of broadleaves and native species proposed for the site, that the pressures on water quality in this area were not identified as coming from forestry; and in his view the net impact of this proposal on water quality would not be negative.

The DAFM inspector further confirmed that a 10m buffer would apply to the aquatic zone to the north of the site and that a 5m buffer would apply to all other relevant watercourses. The Forest Service Environmental Guidelines indicate a 20m buffer as being appropriate where the peat is the underlying soil type. Responding to the appellants observations that peat is shown on Teagasc maps for this area the inspector stated that these maps were indicative only, could not be relied upon on at a detailed level; that his field assessments allowed him conclude with certainty that the soil type was mineral in nature; and that a 10m buffer was appropriate.

The inspector also addressed the percentage of forestry in the townland as it appears in the record of the EIA, stating that the IFORIS system used by DAFM to record the licencing process could not always be relied upon to present the exact proportion of any townland. The figure of 0% forest presented in the report was clearly incorrect and that a manual calculation of this figure reveals a percentage figure of 27.89%. If the proposed planting were to proceed this figure would rise to between 35% and 40% but that in any event there is no strict upper limit to the percentage of any townland that could be afforested. Alternative methods of calculating the actual percentage forest cover and potential area to be covered were stated to be routinely used by the inspectorate as a regular part of their assessment processes.

During the Oral Hearing the appellants reiterated and expanded on many of the grounds as outlined above, including increased flood risk. The lack of response from Leitrim County Council specifically on the topic of flood risk was due, in the view of the appellants, to the failure of DAFM to draw their attention to the flood risk as indicated, for example, by the OPW flood mapping site (both 'business as usual' and climate-change related) and that Leitrim County Council were only concerned with public infrastructure and roadways. Additional submissions stated that not all hedgerows are mapped on the biomap and questioned how they could be adequately protected.

In the view of a contributor, speaking on behalf of a number of appellants, the existing access from the public road will need to be improved and widened and will require planning permission for same and that these access points also lie within water setback zones and will therefore need to be relocated. It was submitted that such works should have been in the scope of the EIA screening. This raised the issue of project-splitting and the screening for EIA should have considered these consequential acts of establishing forestry. Fire risk was raised as a threat to an agricultural building that is situated 3m from the boundary of the proposal lands. Conifer needles alighting on adjacent lands were also cited as a concern and it was submitted that these have a poisonous effect on cattle. Views were expressed on the negative community impacts of more afforestation, lands and houses being enclosed by forestry and the feelings of isolation caused by impaired sightlines between neighbouring dwellings and the general feeling of being enclosed by forestry. Increased deer populations were mentioned as a cause of economic damage to farmers through grazing and also as a road hazard. It was submitted that recreation will be impacted, including to the newly established Leitrim blue way and illegal dumping will increase. The townland boundary was cited as a significant cultural asset that has not been identified and protected adequately in the application. In addition, curlews were said to have been seen locally and the need for these to be protected was raised.

The DAFM Inspector provided additional comments on flood risk and the objective of site drainage being to facilitate water flow from a site in an efficient and environmentally sensitive manner. The adjacent forest was described by the Inspector as growing vigorously and indicative to him that the area was capable of supporting good tree growth where drainage is actually managed. Regarding flooding he clarified that his focus is the drainage of the site itself rather than any impact on the wider landscape. He stated that all inspectors have access to the OPW flood mapping information and refer to these as part of DAFM procedures, but these are indicative in nature and based on previous flood events. This information; the submissions made by third parties; and information obtained during the two field inspections to this site in spring and winter was used by the inspector in his deliberations before ultimately concluding that flood risk was not a significant issue to the establishment of trees on the site. The appellants clarified that Leitrim County Council had previously raised a bridge in this locality and had occasion to enter into agricultural lands to open drains to relieve road flooding. In addressing herbicide use, he stated that manual grass cleaning (not using any chemicals) is cheaper and often employed. When used, herbicide is applied in small quantities using a spot application by knapsack sprayer to the base of each seedling perhaps once or twice during the 30-45 years of the life of the forest. In the view of the inspector, there may be a great impact on water quality from agricultural land and septic tanks during a flooding event than the minimal amounts of herbicide (which is applied at a time of year when flooding is very unlikely).



Regarding fire risk, the Inspector offered that this is assessed in relation to surrounding land use, where the presence of adjacent bogland/heathland raises the fire risk due to the habitual burning of vegetation on these lands in Ireland. The lands surrounding the proposal site do not represent a heightened risk in his view. The setback for dwellings is associated with houses and associated buildings and a haybarn would not fall under the definition of building that would attract a 60m setback (as a mitigation against fire risk). Addressing the treatment of hedgerows, he stated that this is controlled by the forestry standards manual and these cannot be interfered with, whether they are marked on the application mapping or not. Applicants normally only mark the hedgerows of particular importance from a biodiversity perspective on the biomap. Regarding the effect of needles on adjacent grazing lands this effect is not known to the inspector and he is not aware of any scientific literature that makes any such association in Ireland or in any similar state where perhaps there is a longer tradition of coniferous forestry. In any event, in his view, less than half of the application area will be occupied by Sitka spruce and there will be a minimum of 20m distance between each boundary and the nearest conifer tree (10m of setback and 10m of broadleaves around the perimeter), thus reducing the prospect of needles appearing on adjacent lands.

The FAC, in the first instance, considered the Appropriate Assessment screening undertaken by the DAFM. The grounds of appeal do not refer to any specific European site, pathways or effects of concern. The FAC found that the DAFM undertook a screening for Appropriate Assessment in this case that assessed Natura 2000 sites within 15 km of the project area and three sites were identified. The FAC examined publicly available information from the NPWS and EPA and identified the same three sites. Each site is considered in turn and the reasons for the screening conclusions are provided. The FAC considered that the DAFM had sufficient information in respect of the characteristics of the proposal, the location, and types and characteristics of potential impacts, in order to determine the likely significant effects of the proposal itself or in combination with other plans and projects on a European site. The procedures adopted by the DAFM in their assessment are considered to be acceptable. In its referral response, An Taisce (and appellants) drew attention to there being an incorrect setback width on the watercourse to the north of the site (5m rather than the 10m as specified in the guidelines) and the intended setback was confirmed during Oral Hearing as 10m by DAFM Inspector.

Regarding further grounds that the FAC determined as being important to the decision making in this case, the DAFM inspector made two field inspections and had relevant information available to him on flood risk and the productivity of adjacent forestry. The appellants raise the risk to water quality due to herbicide use through flooding of these lands. The licence specifies a maximum of two spot treatments of herbicide over the 30-35 year life of this forest and this is applied at times when flood risk is low. The FAC cannot detect any error in the DAFM determination that this development will not impact negatively on the water quality of any receiving waters. Further activity that could potentially impact on water quality (through silt release) such as thinning, road making and clearfelling will be governed by the licencing standards for these activities in place at the time, if these activities take place. DAFM referred the proposal to An Taisce which made reference to watercourses but none to flooding. It is clear that the role of Leitrim County Council extends to topics other than infrastructure and public lands, as evidenced, for example, by their zoning of this area as having medium capacity for forestry. While it is clear the topic of flood risk carries great weight with the appellants, Leitrim County Council made no reference to any increased flood risk on foot of this proposal, despite having acted in the locality to deal with flooding in the past.

Regarding the Group Water Scheme question in the Inspectors Certification, this is answered 'yes' if the proposed planting site falls within a catchment area of a water scheme designated as sensitive to forestry in the County Development Plan, and where the planting site is greater than 10 hectares. This is not the case here. One appellant states that the site is 4km from the water extraction point for Carrick-On-Shannon, while another appellant proposes a distance of 6km. Based on an approximate measure of hydrological distance, 4kms downstream from the lowest point of the site would place the extraction point for the Carrick-On-Shannon scheme to be at Port Castle, or about 1km south of Leitrim Village and at some distance from Carrick-On-Shannon itself. While the area may be foraging grounds for bat, otter and curlew and the DAFM is minded to offer general protection to such species, no site specific evidence of same was available from official sources at the time of decision making. Fire risk was assessed with regard to the risk from adjoining lands and the FAC is satisfied that this site presents no special risk in this regard. The large scale Teagasc soil type mapping is indicative only and field inspection is far superior when assessing individual sites; the appellant's contention that a 20m aquatic zone buffer should apply in the northern section of this site because it is marked as peat cannot be upheld in the light of two field assessments by DAFM. An unplanted setback of 10m from the public road will be in place for the broadleaves planted on the perimeter, only after a 10m band of broadleaves will the conifers be planted (20m from the road in total) and therefore the ground of appeal regarding lack of observance of setbacks is not upheld. The grounds of appeal that the proposal is in conflict with Strategic Environmental Assessment is not upheld due to such documents being applied to plans and programmes, rather than at the site or project level. Regarding the requirement to improve or widen access points to the proposal sites, these will be dealt with on a case-by-case basis as the need arises and as specified in the referral from Leitrim County Council which draws attention to their role in this regard. The criticism of project-splitting (by considering the afforestation and access issue separately) is, in the view of the FAC, unfounded due to the timeframe involved and the uncertainty as to whether the activity may take place in the future and what methods would be employed at the time. The appellant submission on lack of consultation is not upheld due to the use of site notification and other means of notification as set out in the 2014 Forestry Act. The Leitrim Blueway is located on the Shannon-erne waterway which is unlikely to be affected by the proposal. A 10m setback will be used beside the watercourse to the north of the proposal and will not impede access for fishing, if such is currently possible.

With regard to the safeguarding of the archaeological heritage, the FAC is satisfied that no error has been made in the steps that were undertaken. However, Condition 13 of the licence that was issued constitutes a significant error in the licence documentation. To a lesser degree, there is lack of clarity in relation to certain setbacks in this proposal that merit being addressed. Therefore, in deciding to vary the decision of DAFM, the FAC proposes the following amendments to the licence:

1. Removal of current condition 13
2. Replacement of condition 13 with the following wording (and related map):

"The portion of the development which contains the recorded location of megalithic tomb (LE 027-138) is to be archaeologically excluded. This means an area measuring 80m from the northern boundary of the field is to be left unplanted. An area 20m in radius is also to be excluded around the spot where the large stones were identified (ITM: 595681, 806581) within the hedgerow. Any field boundaries within the proposed development are to be preserved. A structured programme of archaeological monitoring by a suitably qualified archaeologist retained at the licence holders own expense (or that of his/her

Registered Forester) will be necessary for all ground preparation and drainage works relating to the development, as highlighted in pink on the map accompanying the archaeological report. See attached archaeological report and accompanying illustrative map for further details.”

3. Addition of condition 14 as follows:

“A 10m setback is to apply to the aquatic zone located to the north of the proposal block. A 5m setback is to apply to all other relevant watercourses on the site, including a 5m setback to apply between plots 48814430 and 48814421. All internal and boundary hedgerows to be preserved, including those on the townland boundary.”

In considering the appeal the FAC had regard to the record of the decision, the submitted grounds of appeal and submissions received including at the oral hearing. The FAC is satisfied that a serious or significant error was made in making the decision regarding CN83466 and in accordance with Article 14B of the Agricultural Appeals Act 2001, as amended, the decision should be varied to include the conditions identified and set out in this letter.

Yours sincerely,

A large black rectangular redaction box covering the signature of Myles Mac Donncadha.

---

Myles Mac Donncadha On Behalf of the Forestry Appeals Committee