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30<sup>th</sup> November 2021

**Subject:** Appeal FAC095/2021 in relation to afforestation licence CN87215

Dear [REDACTED]

I refer to the appeal to the Forestry Appeals Committee (FAC) in relation to the above licence issued by the Minister for Agriculture, Food and the Marine. The FAC, established in accordance with Section 14 A (1) of the Agriculture Appeals Act 2001, has now completed an examination of the facts and evidence provided by all parties to the appeal.

#### **Background & Hearing**

Afforestation licence CN87215 was issued by the Department of Agriculture, Food, and the Marine (DAFM) on the 13 May 2021. A Hearing of FAC095/2021 was convened by the FAC on the 12 October 2021. The FAC members in attendance were Mr Des Johnson (Chairperson), Mr Seamus Neely and Mr Luke Sweetman. Mr Michael Ryan participated as Secretary to the FAC.

#### **Decision**

The FAC considered all of the documentation on the file, including application details, processing of the application by the DAFM, the grounds of appeal, and all other submissions, before deciding to vary the decision to grant this licence (Reference CN87215).

The proposal is for afforestation on a site area of 6.93ha at Aghagrania, Co. Leitrim. Sitka spruce is proposed on 5.44ha, and Alder on 0.96ha. Stock/rabbit fencing of 512m would be provided.

The DAFM referred the application to Leitrim County Council and An Taisce. The County Council responded stating that the site is located in an area with Medium Capacity and Medium Sensitivity. It is in a High Visual Amenity Area. There are no National Monuments on or near the site. Conditions are recommended in the event of the proposed development proceeding. These mainly relate to access/egress issues on the adjoining public road (L 7306-0). The existing agricultural entrance is not suitable. A new entrance will require consent. A Traffic Management Plan should be provided. A 20m buffer zone should be provided from the edge of private and public roads to ensure that blowdown does not pose a hazard to road users. An Taisce responded stating that Appropriate Assessment is required for the Cuilcagh-Anierin Uplands SAC. The proposed site is adjacent to this European site. The site provides good habitat for breeding wading birds, with Curlew, Golden Plover and Dunlin nesting in small numbers. Peregrine, Merlin and Ring Ouzel are also present. Golden Plover, Peregrine and Merlin are listed in Annex I of the EU Birds Directive and, along with Dunlin and Ring Ouzel, are Red Data species. Red-Grouse, also a Red listed species, is present on the site. Blanket bog areas are extensive and relatively undisturbed. The Drumshanbo Stream\_010 runs through the site. It is classified as being of 'poor' status and 'at risk' under the Water Framework Directive. Afforestation must not further degrade

the quality of the waterbody. The proposed site lies within an Area of High Visual Amenity as designated in the County Development Plan (CDP) (map submitted). The CDP notes that the planting of Norse Evergreens has the potential to lead to increased acidity levels in watercourses, a loss of biodiversity, and adverse impacts on the character of the landscape. Planting of broadleaf species would be a better planting option. The Forestry Licence viewer indicates 6 other applications in close proximity, which have either been approved or are pending a decision. These are predominantly Sitka spruce with a total area, not including the proposed development, almost 70ha. There is considerably more established forestry present in the area. Cumulative impacts must be considered as there is potential to alter the integrity and quality of the SAC, waterbodies and the scenic beauty of the area.

The Inspector's Certification notes that the proposal was field and desk assessed. The site is not prone to flooding or acid sensitive, not sensitive to fisheries, not within a referral zone for NHA, pNHA, SAC or SPA, and is not in a Freshwater Pearl Mussel (FWPM) catchment. There are no archaeological sites or structures on the site. This is a Prime Scenic Amenity Area as per CDP. Herbicide control is proposed in years 0 and 1. Soils are predominantly podzols and the slope is predominantly steep (15-30%). The area is crossed by/adjoins an aquatic zone. In respect of Appropriate Assessment screening, one site is identified within a 15km radius - Cuilcagh-Anierin Uplands SAC. The site is screened out for Stage 2 assessment for reason of the position of the project area downstream from the Natura 2000 site and subsequent lack of any hydrological connection. The percentage forest cover in the townland is c. 7.92%, within 5km is c.10.98%, and in the underlying waterbody is 14.62%

An In-combination report is based on information gathered from planning systems and databases consulted 15.04.2021, generally in the vicinity of the project area in the River Sub-Basin Drumshambo\_010. Non-forestry projects listed include housing, sheep shed, and food production building. Forestry related projects listed are afforestation (10), forest roads (3), private felling (15), Coillte felling (1)

A request for further information was issued by DAFM on 17.11.2020. In response a revised Bio Map was submitted.

The licence issued on 13.05.2021. It is subject to standard conditions plus additional conditions relating to:

- Adherence to Environmental Requirements for Afforestation and Forestry Standards Manual, as amended by periodic Circulars
- All existing trees and hedgerows within the site to be retained
- Setback with a minimum width of 20m from the nearest water's edge to be installed along the stream located within the site boundary and at the eastern boundary
- Unplanted road setback of minimum width of 10m and accompanied by a 10m wide strip of broadleaves to be installed in all conifer plots adjoining a public road
- Setback of a minimum width of 5m to be installed on one side (if an outer perimeter) or both sides (if traversing the site) of the relevant watercourse
- Setback of a minimum of 60m to be installed from the dwelling building. To be accompanied by 5 rows of broadleaves consisting of birch and rowan.

There is a single appeal against the decision to grant the licence. The grounds of appeal state that the DAFM failed to carry out an Appropriate Assessment as this site is in close proximity and hydrologically connected to Cuilcagh-Anierin Uplands SAC. Screening for Appropriate Assessment must be carried out under Regulation 42 of the European Communities (Birds and Habitats) Regulations 2011 (S.I. 474 of 2011) where the proposed development is likely to have a significant effect on an EU site. The In-

combination report is a computer generated list. The Inspector has not identified or adequately examined specific planting or felling applications in the vicinity and their implications in combination with the proposed development. CN 83274 is located directly above and along the same watercourse, and there are several felling applications also on the slopes of the mountain East and West of the application site. CN 83274 belongs to the same applicant and this would be seen as project splitting (screen shot submitted). An EPA map shows streams in the area 'at risk'. The proposed development and CN 83274 (directly connected) would not meet the requirements of the EU Water Framework Directive (WFD) requirement to improve water quality. The Drumshanbo Stream\_010 flows through the site and is classified as of 'poor status' and 'at risk'. It must be ensured that afforestation does not further degrade the quality of the waterbody. This is an area of High Visual Amenity in the County Development Plan. The CDP notes that planting of Norse Evergreens has the potential to lead to increased acidity levels in watercourses, and a loss of biodiversity. The proposed development would adversely impact on the character of the landscape.

In response, the DAFM state that Appropriate Assessment screening was carried out as per the relevant standard operating procedures. The Natura 2000 site was screened out based on Habitat Tables prescribed as part of the Appropriate Assessment screening process. CN 83274 is another applicant. The in-combination report was considered as part of the Appropriate Assessment screening process. The watercourse flowing through the site will have mandatory setbacks applied as per Environmental Requirements for Afforestation. These will ensure the protection of water quality from the proposed development. The afforestation is in an area with various blocks of existing mature forestry and will not have a negative impact on the visual landscape.

A hearing of the appeal was convened on 12<sup>th</sup> October 2021 when all documentation and submissions on file were considered. Noting the extent of existing forestry in the wider area, the FAC decided to seek further information from the DAFM in relation to:

- Provision of a full list of projects considered in the assessment of cumulative effects in the determination of the requirement for EIA
- Explanation of the calculation of figures for the percentage of forest cover in the underlying waterbody, and the apparent discrepancy between figures contained in the Inspector's Certification and the 'In-combination Report'.

In response, the DAFM stated that the Inspector's Certification contained an over-estimation of forest cover but that the estimated forest cover is less than 50ha. This was re-checked manually/visually on the Department's systems. The over-estimate would not change the decision regarding the EIA requirement for this file. At the time of certification, the approximate forest cover estimate within the underlying waterbodies was not functioning correctly with errors occurring. The forest cover in the underlying waterbodies is regarded as an approximate figure and is a simple point of reference information in the overall EIA assessment. The difference between the IFORIS estimate and the 'in-combination' estimate would not have resulted in a different decision regarding EIA requirement for this file. The over-estimation error has now been fixed in an IFORIS update.

The FAC noted that the project lands consist of a number of small enclosed agricultural fields. The lands adjoin a narrow surfaced public road to the south and appear to be elevated above the road. There is also a single storey dwelling and outhouse adjoining to the south of the subject site. The Bio Map submitted shows two relevant watercourses within the site boundaries (both of which flow from north to south and on which a 5m setback is to be provided), and an aquatic zone adjoining the eastern site boundary (on which a 10m setback is to be provided). The streams join with the Moneymore 26 (Order

3) stream a short distance to the south. The site is in the River Sub-basin Drumshanbo\_010 and Sub-catchment Yellow (Ballinaglera)\_Sc\_010. There is extensive forestry in the wider area in all directions from the project lands.

The FAC further considered the appeal and determined that the key issues to be addressed are as follows:

- Habitats Directive provisions
- In-combination assessment and EIA Directive provisions
- Water Framework Directive considerations
- Visual amenity impact
- Other issues

In respect of Habitats Directive provisions, the FAC noted that the DAFM's Inspector's certification included a screening for Appropriate Assessment of Natura 2000 sites within a 15km radius. One such site was identified – Cuilcagh-Anierin Uplands SAC. The FAC considered that there was no reason to consider Natura 2000 sites outside the 15km radius, having regard to the nature and scale of the proposal and the characteristics of the surrounding environment, and noted that the Cuilcagh-Anierin Uplands SAC is the only designated site within that radius and at a separation of approximately 1550m upstream of the project lands. The FAC noted that there is no hydrological connectivity between the project lands and the SAC for which the qualifying interests are Oligotrophic waters, Natural dystrophic lakes and ponds, European dry heaths, Alpine and Boreal heaths, Species-rich *Nardus* grasslands, Blanket bogs, Transition Mires and Quaking bogs, Petrifying springs with Tufa formations, Siliceous scree, Siliceous rocky slopes, and Slender Green Feather Moss. Having regard to the nature and scale of the proposal, the absence of hydrological connection, and the qualifying interests for which Cuilcagh-Anierin Uplands SAC is designated, the FAC found no reason to conclude that the screening carried out by the DAFM was inconsistent with the requirements of Article 6(3) of the Habitats Directive or that the conclusion reached was not correct.

An In-combination Report refers to an approximate 24% forest cover in the River Sub-Basin Drumshanbo Stream\_010 whereas the Inspector's certification notes an approximate forest cover in the Sub-Basin of 14.62%. The DAFM state that the apparent discrepancy in the figures was due to technical problems which have now been corrected. The DAFM states that the difference in the estimates for forest cover would not have altered the conclusion reached that EIA is not required in this case. The FAC examined the factors considered by the DAFM in its EIA assessment before specifically addressing the issue of forest cover in the underlying River Sub-Basin. The extent of existing forestry in the wider area was considered together with the drainage pattern in the area. The FAC noted that there is no existing forestry adjoining the subject lands but that the Order 2 stream flowing adjacent to the eastern appeal site boundary adjoins the eastern boundary of an existing plantation a short distance to the north of the appeal site. Non forestry projects identified in the area include housing, agricultural developments and a food production building. Having regard to the nature and scale of the proposed development, the characteristics of the project lands, the characteristics of the surrounding environment including the existing pattern of forestry cover, and the absence of any hydrological connection from the project lands to any Natura 2000 site within a distance of 50km, the FAC found no reason to conclude that the proposed development would have a significant impact on the Natura 2000 network or the environment either individually or cumulatively with other projects, and that the DAFM conclusion that EIA was not required in this instance was incorrect. In these circumstances, the FAC concluded that the error in respect of forestry coverage figures was not a serious or significant error.

The appellant refers to another proposal under reference CN 83274, stating that this belongs to the same applicant, and is located directly above and along the same watercourse; this would be seen as a case of project splitting. The DAFM, in response, state that there are different applicants in respect of CN 87215 and CN 83274. In a decision dated 25 January 2021 relating to CN 83274, the FAC set aside and remitted a decision to grant a licence for afforestation on a site area of 17.22ha at Aghagrania (to the north and above the current appeal site). The FAC noted that the DAFM made a new decision in respect of CN83274 in April 2021 which was also appealed and the application for CN83274 was subsequently withdrawn by the applicant. In these circumstances, the FAC concluded that the proposed development would not give rise to project splitting for the purposes of avoiding the mandatory submission of an Environmental Impact Assessment Report.

The site is in the Upper Shannon Catchment, the River Sub-Basin Drumshanbo Stream\_010, and the Sub-catchment Yellow (Ballinaglera)\_Sc\_010. The water quality status in the Sub-Basin deteriorated from 'Moderate' to 'Poor' between 2013-2015, with a number of ammonia spikes occurring within the period. The current status is recorded as 'Poor' and 'At Risk', with agriculture and urban waste water disposal listed as pressures. The FAC had regard to the specific conditions attached to the licence requiring setbacks for reason of protecting water quality. Based on the information before it, the FAC found no reason to conclude that there was any serious or significant error made in the decision to grant the licence in respect of impact on water quality.

The County Council referral response states that this is an area with medium capacity and medium sensitivity, and is a high visual amenity area. The FAC noted that the project lands are bounded to the south by a narrow public road with hedgerows either side along stretches, and that they are elevated above the road. Views of the project lands from the narrow public road are partly obscured by an existing single storey dwelling and outhouse and by existing vegetation. The County Council did not object to the proposed development on grounds of visual amenity. In these circumstances, the FAC found no reason to conclude that the proposed development should be refused on grounds of adverse impact on visual amenity, or that there were any serious or significant errors made in the making of the decision to grant the licence.

The An Taisce referral submission states that the project lands provide good habitat for a range of wild bird species, including Red Data and Red listed species, but does not provide any supporting evidence to this effect. The FAC noted that the project lands carry no specific designation for the protection of wild bird species. Based on the information before it, the FAC concluded that there was no significant or serious error made in the decision to grant the licence in respect of this issue. The County Council referral submission raises concerns regarding the adequacy of access/egress and state that the existing agricultural access is not suitable. Having regard to the nature and scale of the proposed development, and to the nature and status of the public road, the FAC concluded that a condition should have been imposed on the licence requiring a traffic management plan to be agreed before development commences and implemented during the course of the development. The FAC concluded that this represented a significant error in the making of the decision to grant the licence.

Based on the information before it, the FAC concluded that there was a significant error made in the making of the decision to grant the licence by not including a condition requiring the submission of a traffic management plan to be agreed before the commencement of the proposed development. In deciding to vary the decision to grant the licence, the FAC concluded that the following condition should be added:

*Before development commences, the applicant shall submit a Traffic Management Plan to be implemented during the period of the carrying out of the proposed development for the written agreement of the DAFM. A copy of the agreed Traffic Management Plan shall be placed on the public file. Reason: In the interests of public safety and orderly development.*

Yours sincerely,

A large black rectangular redaction box covering the signature of Des Johnson.

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Des Johnson on behalf of the Forestry Appeals Committee