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11 February, 2021

**Subject:** Appeal FAC212/2019 and FAC242/2019 regarding licence CN83437

Dear [REDACTED]

I refer to the appeals 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**

Licence CN83437 of afforestation of 8.69ha at Corlaskagh, Co. Leitrim was approved by the Department of Agriculture, Food and the Marine (DAFM) on 22<sup>nd</sup> August, 2019.

#### **Hearing**

An oral hearing of appeals FAC212/2019 and FAC242/2019 was held by the FAC on 11<sup>th</sup> January, 2021. In attendance:

FAC Members: Mr. Myles McDonagh (Deputy Chairperson), Mr. James Conway, Ms. Mary Lawlor.

Secretary to the FAC: Ms. Emma Guerin, Ms Ruth Kinehan

Appellant FAC 212/19: Not present

Appellant FAC 242/19 : Not present

Applicant: Not present

DAFM Representatives: Mr. Seppi Hona

#### **Decision**

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notice of appeal, submissions made at the oral hearing and all other submissions received, and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to set aside and remit the decision of the Minister regarding licence CN83437.

The licence pertains to the afforestation of 8.69ha of enclosed land at Corlaskagh, Co Leitrim, with a species composition of Sitka Spruce (85%) and Broadleaves (15%) in three plots and Norway Spruce (85%) and Broadleaves (15%) in two plots. Ground preparation would include mounding and the planting method by slit planting. 250 kg of granulated rock phosphate per hectare is to be applied and herbicide control is proposed in years 0 and 1. The predominant soil type underlying the project area is

predominantly podzolic in nature. The slope is predominantly flat to moderate (<15%). The project area adjoins an aquatic zone.

The DAFM desk assessed the proposal and undertook and documented an appropriate assessment screening dated 14 May 2019, which concluded that the project area is greater than 3km from any Natura 2000 site and does not overlap any FPM catchment and that there is no factor that overrides the protection provided by this physical separation and screened out the project for the purposes of Appropriate Assessment.

The development was not referred to any referral bodies, while two submissions were received. The licence was approved on 22<sup>nd</sup> August, 2019 with standard conditions attached.

There are two appeals against the decision. The grounds contend that there are grave concerns in relation to the impact the cumulative effect of this afforestation in this townland and the adjacent townlands of Corboghill, Attimarus, Curraghoaghry and others is having on the Social and the Environmental aspects of this area. The percentages calculated in relation to forest cover is also refuted and that an immediate EIA is warranted. It is submitted that this monoculture industrial crop of Sitka Spruce will have a detrimental impact on the habitats and feeding grounds of many species of birds and insects, some which have migrated to these lands as a result of habitat loss due to the continued afforestation and exploitation of this region. It is submitted that coniferous afforestation of these lands will impact negatively on the value of these High Nature Value land and that these soils are a natural carbon sink and this plantation would be a violation and destruction of it's biodiversity at a time when Government announces a National biodiversity crisis. It is submitted that there is a stream on the boundary of this proposed development which drains into the Eslin River which is a tributary of the River Shannon which is a major water source and that there are concerns that the EPA were not consulted under the Water Framework Directive regarding this application and the use of weedkillers. It is submitted that no consideration was given to local concerns or the social impact which this development in conjunction with all the other plantations will have on the neighbouring farmers and the local community. It is submitted that there has been inadequate consultation with appropriate prescribed bodies.

The grounds of the second appeal contend that, based on the information supplied, it is not possible to grant a licence in accordance with the provisions of the Habitats and EIA Directives and that the cumulative impact of the project has not been evaluated. The appellant referred to a number of judgements which they stated would clarify the interpretations of the directives as follows –

Case C-258/11, Peter Sweetman and Others v An Bord Pleanala  
Case C-164/17, Edel Grace and Peter Sweetman v An Bord Pleanala  
Case C-323/17 People over wind and Peter Sweetman v Coillte Teoranta  
Case C-461 Brian Holohan and Others v An Bord Pleanala

In a statement to the FAC, the DAFM submitted that the Appropriate Assessment procedure relevant at the time was applied and the project was screened out, adding that the closest Natura site is located over 13km away to the North of the site and has no hydrological connection as it is located 'upstream' from the proposed site. Details of this Natura 2000 site, the Cuilcagh Anierin Uplands SAC, was provided. It was also submitted that this is a grass/rush site, not HNV farmland as outlined by the appellant, the use of chemicals (Glyphosate) will be minimal, one or two spot applications over 4 years and far less



than would be applied to control rushes if left in conventional agriculture. No referral bodies were consulted because it was not required in the case of this file and the Forest Service is the public body with responsibility for all licencing of forestry activities.

An oral hearing was held and a representative from the Department attended. The DAFM provided an overview of the processing of the application, clarified to the FAC that no in-combination assessment of the proposal was done, reiterated the contentions outlined in its written statement and contended that according to Leitrim County Council this is in an area of high capacity to accommodate forestry.

In addressing the grounds of appeal, the FAC considered, in the first instance, the contention that the proposed development should have been addressed in the context of the EIA Directive. The EU EIA 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 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 proposal is considerably sub-threshold for the mandatory submission of an EIA report. The DAFM 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.

Regarding other contentions raised with regard to the environment, the FAC reviewed the material submitted by all parties to the appeal. The proposal area is for its size relatively long and narrow, in a north to south direction, with a public road separating two plots with a total area of 3.89ha from three plots with an area of 4.8ha, it is largely bounded by grassland and there is a mixture of land cover in the area, no evidence was provided of the presence of any protected habitats or species on the proposal area, and the FAC does not consider that there is any evidence before it that this proposal would result in a significant effect on species in the area. The biomap identifies a watercourse on the southern boundary of the proposal area, which is a relatively short boundary on the site, the publicly available EPA maps confirm the proposal area is in the Eslin subcatchment and Upper Shannon WFD catchment, and the FAC concurs with the contention that this watercourse would drain into the Eslin River. However having regard to the record of the decision and the submitted grounds and the nature, scale and location of the proposal (including the Leitrim County Development plan 2015 - 2021 categorisation of the area as being of High Capacity to accommodate 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.

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 projects, having regard to the conservation objectives of that designated site. In this case, the DAFM undertook a Stage 1 Appropriate Assessment screening, and concluded that the project area was identified as being greater than 3km from any Natura 2000 site and not overlapping with any FPM catchment, and there is no factor that overrides the protection provided by this physical separation, and it deemed that there was no possibility that this project will have a significant effect on any Natura 2000

site due to physical separation and the lack of any ecological pathway, that any safeguards within the project, or any conditions attached to any approval issued, are unrelated to the protection of any Natura 2000 site and the project was screened out for appropriate assessment. The record does not contain a consideration of other plans and projects in combination with the proposal and this was confirmed by the DAFM at the oral hearing. The FAC is satisfied that this constitutes a serious error in the making of the decision and is, thus, remitting the decision back to the Minister to undertake a new screening of the proposal for appropriate assessment.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal, and submissions received including at the oral hearing. The FAC concluded that a serious error was made in making the decision and is setting aside and remitting the decision back to the Minister so that a new appropriate assessment screening be undertaken of the proposal itself and in combination with other plans or projects under Article 6 of the EU Habitats Directive before a new decision is made.

Yours sincerely,

A black rectangular redaction box covering the signature of the Forestry Appeals Committee member.

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on behalf of the Forestry Appeals Committee