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21<sup>st</sup> July 2021

**Subject:** Appeal FAC 820/2020 regarding licence CN84689

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 as amended, has now completed an examination of the facts and evidence provided by all parties to the appeal.

#### **Background and Hearing**

Licence CN84689 relating to the afforestation of 20.50 ha at Cloonlee, Co Mayo was issued by the Department of Agriculture, Food and the Marine (DAFM) on 21<sup>st</sup> October 2020. A hearing of appeal FAC 820/2020 was held by the FAC on 14<sup>th</sup> June 2021. The FAC Members in attendance at the hearing were Mr. Myles Mac Donncadha (Chairperson), Mr. James Conway, Mr. Seamus Neely and Mr Derek Daly.

#### **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 affirm the decision of the Minister for Agriculture, Food and the Marine regarding licence CN84689.

#### **General**

The licence relates to afforestation on 20.50 ha at Cloonlee, Co Mayo. The application is accompanied by a location and bio map. The proposal / site is described in a Natura Impact Statement (NIS) submitted on behalf of the applicant as being on a gently-sloped, enclosed, greenfield site which is located at approximately 70m OD over peat and mineralised peat soils with alluvial deposits along the two lowland depositing tributary streams (FW2) of the Yellow River and between which the site is located. The site is said to be dominated by semi-improved grassland (GA1), acid wet grassland (GS3/4) in a matrix with drier acid grassland (GS3) knolls and wetter areas intermixed, acid flushes (PF2) with occasional furze scrub (WS1). It is described as currently unused by grazing livestock and that field boundaries are delineated by hedgerows (WL1) with earth banks (BL2) and associated drainage ditches (FW4). The R323 road (BL3) is said to run through the site dividing it into two sections, which drain gently down to their respective watercourses on the boundaries of the site to east and west. The NIS describes that the site is partially contained within the River Moy SAC (002298) to the eastern edge along the stream boundary

and that there is evidence of past stream dredging in the earth banks (BL2), covered in grassland vegetation, within 5m of the watercourse. There are powerlines crossing the site and it states that there is an excluded derelict dwelling (BL3) in the centre. The NIS also sets out that the stream flowing through the site is the Yellow Knock\_020 which has a Good Water Framework Directive status assigned to it in the 2013-18 assessment period. It also sets out that the Swinford WFD Groundwater waterbody status for the 2013-18 assessment is also Good and that a search of DAFM IFORIS information carried out on 1<sup>st</sup> July 2020 revealed that the site is within Mayo CDP 2014-2020, LCA: Policy Area 4 - Drumlins and Inland.

#### **Appropriate Assessment Screening and Determination**

An Appropriate Assessment screening was undertaken by an external Ecologist on behalf of the DAFM. It is dated the 9<sup>th</sup> October 2020 and describes the site as follows; 'The western and most easterly portions of the site are underlain by Cutover peat. The middle of the site is underlain by surface water gleys and ground water gleys, described as deep poorly drained mineral, derived from mainly calcareous parent materials'. It quotes from the NIS (02/07/220) as follows; 'The site is partially contained within the River Moy SAC (002298) to the eastern edge along the stream boundary. There is evidence of past stream dredging in the earth banks (BL2), covered in grassland vegetation, within 5m of the watercourse.' It also states; 'According to a revised BIO plan submitted on the 8<sup>th</sup> October 2020, it is proposed to plant the site with a mixture of conifer plantation and native woodland. Plots 1 and 5 will be afforested according to Scenario 4 (GPC 10) of the Native Woodland Scheme, with a mixture of alder, birch, pedunculate oak and rowan. Plots 2, 3, 8, 11 and 12 consist of orchid-rich grassland and poor fen/flush habitat which will be retained as Areas for Biodiversity Enhancement. Plots 4, 6, 7, 9, 10 and 13 will be afforested as conifer plantation, with 85% Sitka spruce and 15% additional broadleaves.' It also states; 'Fertiliser: 250kg Granulated Rock phosphate on conifers only (greater than 20m from relevant watercourses). Not on broadleaves'. The screening identifies four European Sites (River Moy SAC002298 which has overlap with the site, Urlaur Lakes SAC001571 - lies approximately 10.5km northeast of the project site, Errit Lough SAC000607 - lies approximately 14.5km east of the project site and Balla Turlough SAC000463 - lies approximately 11km west of the project site) within 15 km of the project area. The River Moy SAC 002298 is screened in and the other three sites are screened out. The reasons for the screening conclusions reached are recorded in the report on file.

A report dated 12<sup>th</sup> October 2020 detailing the Appropriate Assessment Stage 2 consideration and Determination is to be found on file. This report was prepared by an external Ecologist on behalf of the DAFM and details (at section 3) the Appropriate Assessment considerations. It includes the following commentary in relation to the NIS; *'It is considered that the Natura Impact Statement prepared (on behalf of the applicant), hereafter referred to as the NIS, contains a fair and reasonable examination, evaluation and analysis of the likely significant effects of the activity on the environment, in particular on the River Moy SAC 002298, and adequately and accurately identifies, describes and assesses those effects, except in relation to the following points:*



- *The NIS states that inverse mounding will be carried out within the SAC, outside the setback areas. As per advice from NPWS, no inverse mounding should be carried out within the SAC.*
- *It is proposed to retain areas of orchid-rich grassland as Areas for Biodiversity Enhancement within the site, but the NIS does not acknowledge the fact that these areas, which are currently maintained through grazing, will be ungrazed following the afforestation and installation of stock-proof fencing; therefore, this habitat is likely to succeed to scrub/woodland in a number of years. Nonetheless, retaining these areas will provide open habitat of value to a range of species for a number of years, and in the long-term will provide structural diversity within the woodland which will add to its biodiversity value and so is seen as a positive impact for the River Moy SAC. It is noted that orchid-rich grassland does not correspond to any habitat listed as a qualifying interest of the SAC.*
- *The mitigation proposed does not include for an Ecological Clerk of Works (ECOW). It is considered that an ECoW will be required to visit the site at the outset of the project in order to carry out a pre-works survey, areas of habitat for retention, and to provide a briefing to contractors on the sensitivity of the site and mitigation to be implemented to prevent impacts on the SAC.'*

The Appropriate Assessment and Determination report dated 12<sup>th</sup> October 2020 clearly sets out the specific Mitigations in relation to the River Moy SAC. These Mitigations are included in the licence as issued.

#### **Referrals / Submissions**

The application was referred to Mayo County Council, An Taisce and the National Parks and Wildlife Service. While raising no specific objection to the proposal the latter made a detailed reply by correspondence dated 9<sup>th</sup> October 2019 which set out site specific commentary and recommendations pertinent to the DAFM's assessment of the proposal. No record of a response from the County Council or An Taisce is to be found on file. The file record shows that four third party submissions relating to the application were received on 5<sup>th</sup> September 2019, 9<sup>th</sup> September 2019, 16<sup>th</sup> September 2019, and 30<sup>th</sup> September 2019.

#### **Appeal**

There is one appeal (FAC 820/2020) against the decision to issue the licence in this case. It is set out in two documents – one handwritten and the second typed. The Grounds of appeal include (handwritten) that the Land on the western side of appellant's land is planted since 2010 without any regard to the SAC in which it sits; that the proposed forest on the southern side of the site eventually drains into the River Moy via the Yellow river; that the proposed plantation occupies an area of ground which is rich in wildlife; that the forest will affect the pheasant, hare, curlew, snipe population and replace such with wild deer, mink and pine martin. The typed submission contends that there is a lack of clarity as to what the proposed ratios of Sitka spruce and alder are; that there is a lack of a detailed drainage map and sets out that the reason that (the appellant) would need this is because the part of the site, which is marked 861, has a drain which flows into (appellant's) SAC. The grounds also set out that this gives rise to

concerns that in time the runoff could cause a change in the pH of the SAC and that the drains are in an area on which rock phosphate is allowed to be used; that this is a sloping site which all drains naturally to the salmonid river and otter habitat; asks will the silt traps, in time, cope with the run off and pine needles which will naturally wash down towards the river; states that alder will in time self-propagate to invade the SAC and will pose a Nitrogen risk as alder has root nodules that fix Nitrogen; that the grazing of the SAC area and the non-use of any fertiliser pesticides on this land has led to a diverse and more appealing habitat for the breeding and nesting of curlews; that the E.U. Directive 2011(si No 477) states that E.U. countries must establish systems of strict protection for animal and plant species which are threatened; states that the nature of this site and the lack of intensive farming thereon has led to a return of the jacksnipe, (known traditionally as the minain aerach); that they nested in (plots) 667 and 675 for the first time in 20 years, that the smaller plot 593 area was home to the pond lizard; that this year saw the return of an owl to the area; submits that there will be a decimation of pigeon nests; that these birds are all on the amber list and would like to ascertain their protection; that the proposed afforestation is smack in the middle of the horseshoe bat foraging area as it goes back and forth between Cloonlee and Rooskey; seeks reassurance that the Sitka spruce will not affect the bats ability to navigate their home territory in search of their food; that the forest and plantation management are the highest threat to the horseshoe bat; states that they are not opposed to afforestation but really do have genuine concerns for the protection of all the species that reside within this site. The appellant also states that they have concerns that as this is not 'farm forestry', that it may be sold on to foreign investors for the purpose of carbon sequestration and not maintained in a manner which will protect the environment and wildlife within the site. The appellant also states that the planting of birch would be a lot more preferable in this case.

#### **DAFM Statement to the FAC**

In a statement to the FAC, the DAFM set out that the decision was issued in accordance with procedures, S.I. 191/2017 and the 2014 Forestry Act. The statement also records the relevant application processing dates, confirms that the application was referred to Mayo County Council, An Taisce and the National Parks and Wildlife Service (who replied on 9<sup>th</sup> October 2019). The statement record shows that four third party submissions relating to the application were received on 5<sup>th</sup> September 2019, 9<sup>th</sup> September 2019, 16<sup>th</sup> September, and 30<sup>th</sup> September 2019. The statement also references the Appropriate Assessment Screening and Determination carried out in relation to the project for the DAFM, references the NIS as submitted on behalf of the applicant and confirms that the project was both desk and field assessed. In relation to the decision to approve the licence, the statement sets out that to ensure the project will not have an adverse effect, alone or in-combination with other plans and projects, on any European Site, all mitigations set out in the Appropriate Assessment Determination dated 12<sup>th</sup> October 2020 must be adhered to and that they formed conditions of the licence. It was also stated that only broadleaves would be planted in plots 667(9) and 675(10). The statement also confirmed that setbacks to the public road in the case of broadleaves to be 10m and in the case of conifers to be 20m.



### **Consideration of the appeal by the FAC**

In examining the grounds of appeal, the FAC considered that most of the grounds in this case related to Appropriate Assessment and compliance with the EIA Directive and matters related to them. Therefore, the FAC in the first instance considered the grounds in the appeal in relation to Appropriate Assessment and related matters. In this case the FAC finds that the applicant had a Natura Impact Statement (NIS) carried out and that this was submitted to the DAFM in support of the application. The said NIS described the proposal and the site and considered, among other aspects, the site soils, vegetation, hydrology and topography. It described the site as unused grazing for livestock and that field boundaries are de-lineated by hedgerows (WL1) with earth banks (BL2) and associated drainage ditches (FW4). It sets out that the R323 road (BL3) divides the site into two sections and that these drain gently down to their respective watercourses on the boundaries of the site to east and west. The NIS describes the site as being partially contained within the River Moy SAC (002298) to the eastern edge along the stream boundary. The NIS also sets out that the stream flowing through the site is the Yellow Knock\_020 and that the Waterbody has a Good status assigned to it for the 2013-18 assessment period. The NIS also sets out that the Swinford WFD Groundwater Waterbody status for the 2013-18 assessment is also Good.

The FAC also finds that the DAFM had an Appropriate Assessment Screening (AAS) carried out by an external Ecologist which is dated the 9<sup>th</sup> October 2020. This screening report notes that the site is partially contained within the River Moy SAC 002298 to the eastern edge along the stream boundary. The screening identifies four European Sites (River Moy SAC 002298 which has overlap with the site, Urlaur Lakes SAC 001571 which lies approximately 10.5km northeast of the project site, Errit Lough SAC 000607 which lies approximately 14.5km east of the project site and Balla Turlough SAC 000463 which lies approximately 11km west of the project site) within 15 km of the project area. The River Moy SAC 002298 is screened in and the other three sites are screened out. The reasons for the screening conclusions reached are recorded in the report to be found on file.

A report dated 12<sup>th</sup> October 2020 detailing the Appropriate Assessment Stage 2 considerations and Determination is also to be found on file. This report was prepared by the same external Ecologist (as the AAS) and it details at section 3 the Appropriate Assessment considerations in this case. This Appropriate Assessment and Determination report dated 12<sup>th</sup> October 2020 clearly sets out the specific Mitigations in relation to the River Moy SAC and these Mitigations are included in the licence as issued. The FAC examined publicly available information from the NPWS and EPA and identified the same four European sites (River Moy SAC 002298, Urlaur Lakes SAC 001571, Errit Lough SAC 000607 and Balla Turlough SAC 000463). There are also records on file to show that the DAFM had recorded other plans and projects, including forestry and non-forestry projects and plans, that were considered in relation to potential in-combination effects of the proposal. The FAC also noted the content of the statement made to it by DAFM wherein it set out that the conclusion of the Appropriate Assessment process and Determination was that there would be no residual effects on the SAC. Based on the information available to it, including in the grounds of appeal, 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 FAC further considers that the procedures adopted by the DAFM provide for opportunities for the public to make submissions on the proposal were consistent with the requirements of Article 6(3) of the Habitats Directive. The procedures adopted by the DAFM in their assessment are considered to be acceptable. Neither is the FAC satisfied that a serious or significant error was made in the making of the decision regarding Appropriate Assessment in this case and concurs with the conclusions reached.

The FAC considered the grounds relating to the Environmental Impact of the proposal and the Impact on Water Quality. 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. 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 as described is for the afforestation of 20.5 ha and is sub-threshold for the mandatory submission of an EIA report. The FAC found that 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. Regarding contentions raised about the environment / water quality, the FAC reviewed the grounds submitted in the appeal. The FAC finds that the proposal area is separated into two pieces by the public road, is on a gently sloped, enclosed, greenfield site which is largely bounded by watercourses to east and west. The FAC also finds that fertilizer is to be applied only in the case of the conifer portion of the site as approved and not within 20m of relevant watercourses.

The publicly available EPA maps confirm the proposal area is in the Yellow Knock\_020 sub-catchment and that the waterbody has a Good status assigned to it in the 2013-18 assessment period. The licence also contains a specific condition (set out as part of the Mitigations arising from the Appropriate Assessment Determination process) requiring the appointment of a suitably qualified Ecologist to act as an Ecological Clerk of Works (ECoW) for the project and specifies works / checks to be carried by the ECoW including in relation to setback areas and locations for silt traps. The licence contains a condition requiring the planting of broadleaf only on plots 667(9) and 675(10), a requirement to establish an oak plantation of at least .5ha on plot 884(7), that there is to be no inverse mounding within the SAC, that there is to be a 20m setback along the aquatic zone, and that silt traps shall be installed within existing forest drains and other relevant watercourses onsite at regular intervals throughout their length (but no closer than 20m from an aquatic zone), and that these (silt traps) shall be monitored and maintained (as necessary) throughout operations to ensure continued effectiveness. Other conditions specific to the protection of water quality and environmental protection are also contained in the licence conditions including in relation to the use of fertilizer, the use of pesticides/herbicides, drain crossing by heavy machinery and the tapering out of drainage channels before entering the water setback area. Having regard to the record of the decision, the submitted grounds of appeal, the nature, scale and location of the proposal and the conditions under which the project is to be carried out, the FAC is not satisfied that



the proposal would result in any likelihood of significant effects on water quality. Neither is the FAC satisfied that a serious or significant error or a series of errors occurred in the DAFM conclusion regarding EIA and is satisfied that an EIA was not required in this case.

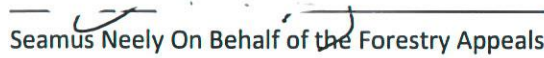
In relation to the contention in the grounds of appeal that the proposal will cause a change in the types of species using the site the FAC noted the response of the DAFM in the statement provided to it, wherein it set out that there would inevitably be a change in the type of species using the site arising from the change in habitat from grassland to woodland; that pheasant is not a species of conservation concern, that hare is protected under the Wildlife Act (1976) and that no signs of this species were found on site during the site survey; that there is abundant habitat suitable for this species (hare) in the surrounding area, that common snipe was recorded on site during a site survey; that there is abundant habitat in the surrounding area (for common snipe); that Curlew is a red listed conservation concern and that it was not recorded on site during a site survey; that the NPWS were consulted and did not raise concerns regarding Curlew; that Jack Snipe is a winter visitor to Ireland and is not known to winter at the location while having been recorded within the 10 km grid square within which the site is located; that the planting mix would provide foraging habitat for owl species; that there are no designated sites for lesser horseshoe bats within 15km and that the trigger that DAFM apply for screening out impacts on the species is 2.5km, and that the planting mix includes a significant proportion of native woodland which would provide foraging for lesser horseshoe bats. Having regard to the record of the decision, the submitted grounds of appeal, the nature, scale and location of the proposal and the conditions under which the project is to be carried out, the FAC is not satisfied that the DAFM erred in its processing of the licence application in this case as it relates to these grounds in the appeal.

The FAC considered the contention in the grounds of appeal that this is not 'farm forestry', that it may be sold on to foreign investors for the purpose of carbon sequestration and not maintained in a manner which will protect the environment and wildlife within the site. The FAC finds a lack of basis for this contention and is not satisfied that the DAFM has erred in its processing of the licence application in this case as it relates to this contention in the appeal as submitted. In relation to the contention in the appeal that there is a lack of clarity as to what the ratios of Sitka spruce and alder as approved are the FAC finds that this is clearly set out in the 'Species Approved' schedule as attached to the licence approval issued in this case.

The FAC noted that two third party submissions were made to the FAC which post-dated the decision of the DAFM (21<sup>st</sup> October 2020) to issue the licence in this case. While the FAC considered matters of a general nature as part of its consideration of the appeal in this case which would have included some of the issues raised in the third-party correspondence, it did not consider the said correspondence as it had not been submitted by parties to the appeal. The FAC, in considering a post appeal submission made by the appellant, noted that the blockage of a drain as referenced in the said submission had been considered as part of the NIS in this case, had been referenced in the statement made to it by the DAFM and considered that it had been adequately addressed in the processing of the application.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal, any submissions received during the processing of the application and including a post appeal submission made by the appellant. The FAC is not satisfied that a serious or significant error or a series of errors was made in making the decision in this case and neither that the decision was made without complying with fair procedure. The FAC is thus affirming the decision of the Minister regarding licence CN84689 in line with Article 14B of the Agricultural Appeals Act 2001, as amended. In deciding to affirm the decision, the FAC considered that the proposed development would be consistent with Government policy and Good Forestry Practice.

Yours sincerely,

  
Seamus Neely On Behalf of the Forestry Appeals Committee