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28<sup>th</sup> July 2021

**Subject:** Appeal FAC 082/2021 relating to Licence CN86184

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.

#### **Licence**

The licence is for 6.41 Ha of afforestation of Sitka spruce and Broadleaves (GPC 3) at Drumbrick, Co. Leitrim. The application was originally submitted to the DAFM on the 29/04/2020. The proposal was revised omitting Plot Nos. 9 and 10 (Species map dated 12/30/2021). One third-party submission was received on the licence application. The Department of Agriculture, Food and the Marine (DAFM) approved the licence on 29/03/2021 with five standard conditions.

There is one appeal against the decision to grant the licence.

#### **Forestry Appeals Committee.**

The appeal was considered by FAC Members: Mr. John Evans (Deputy Chairperson), Mr. Seamus Neely, Mr Vincent Upton and Mr. Iain Douglas on 21/07/2021. Secretary to the FAC: Ms. Marie Dobbyn.

At the sitting of the FAC it had before it the full DAFM record of the decision, the notice and grounds of appeal and a Statement of Fact (SoF) provided by the DAFM.

#### **Decision**

Having regard to the evidence before it, in particular, the full record of the decision by the DAFM, the notice and grounds of appeal, and the considerations set out hereunder, the FAC has decided to affirm the decision of the Minister to grant licence Reference CN86184 at Drumbrick, Co. Leitrim as issued.

#### **Background**

An Inspector's Certification Report certified by the DAFM on 24/03/2021 indicates that both a desk and field inspection were carried out on the proposed afforestation. The report describes the soil type underlying the project area as predominantly podzolic in nature, with a predominantly flat to moderate (<15%) slope and that the site does not adjoin or contain aquatic zone(s). The vegetation type(s) within the project area comprise wet grassland, scrub and hedgerow.

The report notes that there are two Natura 2000 sites within 15Km of the proposed afforestation, the Lough Oughter & Associated Loughs SAC (Site Code 000007) and the Lough Oughter SPA (Site Code

004049) and records an Appropriate Assessment (AA) screening decision which screened out the project. The reasons for screening out Lough Oughter & Assoc. Loughs SAC are (a) the absence within and adjacent to the project area, of any habitat(s) listed as a qualifying interest of the Natura site. The project area is 5.8 km from SAC with no hydrological connection. There will be no effect on any of the qualifying interests (Ref Habitat table), (b) the absence of any aquatic zone within or adjoining the project area and (c) The absence of any significant relevant watercourse(s) within or adjoining the project area. The reasons for screening out The Lough Oughter SPA are (a) the unsuitability of the project area for use by any species listed as a qualifying interest of the Natura site. The project area is 7.8km from SPA and is beyond the foraging range of any of the qualifying interests (Ref Bird foraging table), (b) the absence of any aquatic zone within or adjoining the project area, and (c) the absence of any significant relevant watercourse(s) within or adjoining the project area.

The report is accompanied by an in-combination assessment carried out by the DAFM. Having assessed a number of plans & projects, including planning applications in the vicinity, the provisions of the Leitrim county Development Plan 2015-2021, the EPA and other forestry plans in the vicinity of the site, the report concludes that the project has no potential to contribute to any effects on European sites when considered in combination with other plans and projects.

The licence application was not referred to any external body.

### **Appeal**

There is one appeal by the Save Leitrim Group against the decision to grant the licence. The grounds of appeal are summarised as follows:

1. Appropriate Assessment is required as there is a hydrological connection to Derreskit Lough which forms part of the Lough Oughter & Assoc. Loughs SAC 000007.
2. 2 site notices are confusing which is the correct one and where is the access?
3. There is one folio for plot 7 and different folio for Plot 8 parcel. Plot 8 is questionable.
4. The land it is proposed to plant would be considered HNV and rich in biodiversity
5. The cumulative effect within a 5km radius has not been assessed and the impacts on the social, economic and the environment.

### **Hearing**

At the hearing, the FAC had before it a Statement of Fact (SoF) dated 01/06/2021 confirming the administrative details of licence application CN86184 as outlined above and states that the DAFM is satisfied that all criteria in its standards and procedures had been adhered to in making the decision on this licence application.

The FAC also had before it a SoF by the DAFM Forestry Inspectorate dated 11/05/2021. The Inspector confirmed that the relevant AA procedure of November 2019 was in operation at the time, that it was applied, and that the proposed afforestation was screened out after Standard Operating Procedures were followed. The SoF contains a response to the third-party appeal.

### **Consideration by the FAC**

The FAC consulted with publicly available mapping provided by the Environmental Protection Agency, the OSI, the DAFM Service, and other on-line services.

The original application was comprised of two separate areas and Plots 9 and 10 were subsequently withdrawn by the Applicant. Aerial photographs submitted with the application show the licenced land



currently as agricultural grassland. The application describes the land as enclosed, agricultural land with a grass, rush vegetation type on mineral soil and a flat to moderate slope. This is in keeping with the available maps and spatial data. The site is bounded by forestry to the west and agricultural grassland on the other three sides. A network of hedgerows cross the site. A dwelling lies directly south from the proposal and an unplanted setback is marked on the Biomap. Access to the site from the public road is close to the dwelling.

The proposal would involve site preparation through woody weed removal and mounding without additional drainage with one application of herbicide followed by tree planting using the angle notch method. The application of granulated rock phosphate, a slow release fertiliser, at a rate of 350 kg/ha is included. The existing hedgerows would be retained and a 5 metre setback from the boundary hedgerow is included along with unplanted setbacks from dwellings and watercourses in keeping with good practice and the Environmental Requirements for Afforestation. A site notice is described as being erected at the public road and photos are provided.

Soil type is identified as Surface water Gleys and Groundwater Gleys on the EPA mapping, which is generally an acidic, deep, poorly drained mineral soil

The Water Framework Directive River Waterbody the Laheen Stream\_010 is located circa 350m south and west of the site. The Laheen Stream\_010 is accorded poor status in the 2013-18 WFD Review and is considered at risk. The pressures identified for the Laheen Stream\_010 are Forestry & Channelisation. The site lies within the Erne Catchment and the Cullies\_SC\_010 sub-catchment.

The underlying Ground Water body is Killashandra IE\_NW\_G\_062 which had Good status 2013-18 and is not at risk.

The site is not in a High Visual Amenity Area as set out in the Leitrim County Development Plan (CDP) 2015-2021. The land is not within a High Amenity Area or Area of Outstanding Natural Beauty and would not impact on any Outstanding views identified in the County Development Plan (CDP). The area is classified as having a low sensitivity or high capacity to accommodate forestry in the CDP.

The proposed afforestation is not within a Natura 2000 site nor is it required for the management of a Natura 2000 site. The FAC has confirmed that the only Natura sites identified as being within 15km of the site are those considered in the Inspectors Certification: Lough Oughter & Associated Loughs SAC (Site Code 000007) and Lough Oughter SPA (Site Code 004049). The FAC noted that DAFM completed and recorded a screening for Appropriate Assessment (AA) that determined that the proposal itself and in combination with other plans and projects would not impact on a Natura site. The FAC concurs with this conclusion.

In addressing the grounds of appeal, the FAC considered the following matters,

#### **Appropriate Assessment**

The appellant's contention in the first ground of appeal is that the Inspector is incorrect to screen out the proposed afforestation due to its hydrological connectivity to Derreskit Lough, part of the Lough Oughter & Associated Loughs SAC.

The FAC noted that the proposed afforestation is not directly connected with or necessary to the management of the Lough Oughter & Associated Loughs SAC and that under Article 6(3) of the Habitats

Directive such plans and projects are required to undergo Appropriate Assessment if the plan or project is likely to have a significant effect on that SAC, either individually or in combination with other plans or projects. In the context of this ground of appeal the mere presence or otherwise of a hydrological connection to the SAC does not in itself generate the need for Appropriate Assessment it is whether that connectivity leads to a possibility of significant effect on the SAC.

The FAC noted the reasons in the Inspector's certification for screening out the need for AA (i) a lack of hydrological connection, (ii) the absence of any aquatic zone within or adjoining the project area (iii) the absence of a significant relevant watercourse(s) within or adjoining the project area.

Having consulted mapping by the EPA and OSI and considering the record of the decision and the fact that a site inspection had been undertaken by the DAFM, the FAC is satisfied that that following the decision by the Applicant to omit Plot Nos. 9 and 10 (as per the species map dated 12/30/2021) there is no direct hydrological connection from this site to Lough Oughter & Associated Loughs SAC but that there in fact an indirect hydrological connection and that the hydrological distance from the site to Derreskit Lough is circa 10.5 km. Biomap 2 dated 10/12/2020 submitted by the applicant does not show any aquatic zone within or adjoining the project area. It does show a relevant watercourse (existing drains) along the northern site boundary (not considered a "significant" relevant watercourse by the Inspector). According to OSI mapping this drain travels northeast for c. 50m where it joins another drain flowing southeast for 1.8km hydrologically to join the Laheen Stream\_10 and then via the Cullies\_40 river waterbody to Derreskit Lough.

The FAC noted that this licence was subject to a field inspection and that the Inspector was in a position to determine whether the relevant watercourse was significant or not and to assess the potential for significant effects on a European site to arise.

The FAC noted that Condition 5 of the licence requires adherence to the Environmental Requirements for Afforestation and that all guidelines to apply, these include standard best practice measures attached to all afforestation licences.

The FAC is satisfied that an error was made in the AA Screening where it was stated that there was no hydrological connection between the site and the Lough Oughter & Associated Loughs SAC when mapping indicates that there is an indirect connection. However, the FAC is also satisfied that the error is not serious and does not materially affect the conclusion of the AA Screening for Lough Oughter & Assoc. Loughs SAC *"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"*, given the scale and nature of the proposed afforestation, the indirect nature of the hydrological connection, the hydrological distance of the site from the SAC, the Qualifying Interests and Conservation Objectives of the SAC.

**Two Site Notices are confusing which is the correct one and where is the access?**

The FAC noted the Inspector's response in the SoF where it is stated that two site notices were erected as the original application had proposed afforestation areas on each side of the road and access is marked on the submitted maps. The FAC further noted that the two areas to be planted were not contiguous and that the two site notices and access points were clearly shown on the biomaps 1 & 2 dated 10/12/2020. The revised proposal only omitted Plots 9 & 10 with no change to the access to plots 7 & 8. The FAC therefore accepts that DAFM has not erred in its processing of the application as it relates to the forestry Regulations 2017.



### **Folios**

The FAC noted that the Pre-Approval Submission Report of 24/11/2020 that applicant is stated to be the owner of the lands. The FAC further noted the Inspector's response in the SoF where it is stated that applicant's forester informed DAFM that the Applicant is the owner of the lands. The appellant has adduced no evidence that the applicant does not own the lands to be afforested or that the decision was made in error in this regard.

### **High Nature Value (HNV) farmland**

The FAC noted that HNV farmland, according to Teagasc, "is typically characterised by low-intensity farming associated with high biodiversity and species of conservation concern". It is clear from the record that a DAFM inspector did visit the site and did record its characteristics, which did not accord with the Teagasc definition. No evidence was adduced to the contrary and the FAC is not satisfied that the DAFM evaluation of this particular site contained a serious error

### **The cumulative effects have not been assessed.**

The FAC noted that an assessment of cumulative effects arises from the requirement for an EIAR to address the *"the cumulation of effects with other existing and/or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources;"*. In considering this ground of appeal, the FAC had regard to the fact that 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 is 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, or afforestation below the specified parameters where the Minister considers such development would be likely to have significant effects on the environment. At 6.41 Ha. the proposed afforestation is significantly sub-threshold for the mandatory submission of an EIAR.

The FAC noted that the DAFM recorded a consideration of the application across a range of criteria relevant to the development proposed, including water, soil, terrain, slope, designated areas, landscape and cumulative effects, and determined that the project was not required to undergo EIA. The FAC is satisfied that the range and type of criteria considered is appropriate for DAFM to determine whether an EIAR was required having regard to the nature, scale and location of the proposal. As noted, the lands are private, enclosed, agricultural land and do not fall within or close to any designated area for landscape or conservation. Existing hedgerows on the lands would be retained and a 5 metre unplanted setback would be included from the boundary hedgerow. There are no recorded monuments on or adjoining the land. The lands are on mineral soil and at a remove from any designated waterbodies and the proposal is required to adhere to a range of good practice measures and the FAC does not consider, based on the evidence before it, that the proposal would have an adverse impact on water quality. The lands are not close to any densely populated area and there is an unplanted setback included from the closest dwelling which lies southerly from the proposed planting. The grounds do not provide evidence of the particular proposal having the capacity to result in significant effects on the environment. The FAC is not satisfied that the Minister failed to have regard to the likely significant effects on the environment of the proposal including the cumulation with other existing and approved projects.

**Conclusion**

In considering the appeal, the FAC had regard to the record of the decision and the submitted grounds of appeal. The FAC is satisfied that no serious or significant error or series of errors was made in making the decision or that the decision was made without complying with fair procedure. The FAC is thus affirming the decision of the Minister regarding licence CN86184 in accordance with Section 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,

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Iain Douglas,  
On Behalf of the Forestry Appeals Committee