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30<sup>th</sup> July 2021

**Subject:** Appeal FAC 858/2020 relating to Licence CN86343

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.

**Licence.**

The licence is for 8.0 Ha of afforestation of Sitka spruce and Additional Broadleaved species at Lugmeeltan, Co. Leitrim. The application was submitted to the DAFM on the 22/04/2020. Three third-party submissions were received on the licence application. The Department of Agriculture, Food and the Marine (DAFM) approved the licence on the 07/11/2020 with three standard conditions.

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

**Forestry Appeals Committee.**

The appeal was considered by FAC Members: Mr. Donal Maguire (Deputy Chairperson), Mr. Derek Daly and Mr. Iain Douglas on 14/07/2021. 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 record of the decision by the DAFM, the notice and grounds of appeal, the SoF from the DAFM and the considerations set out hereunder, the FAC has decided to affirm the decision of the Minister to grant licence Reference CN86343 at Lugmeeltan, Co. Leitrim as issued.

**Background.**

The SoF provided by the DAFM dated 03/03/2021 indicates that a both a desk and field inspection were carried out on the proposed afforestation. The final Inspector's Certification Report (with a spatial run dated 04/11/2020) describes the soil type underlying the project area as predominantly podzolic in nature, with a predominantly flat to moderate (<15%) slope and that the project area is crossed by/adjoins an aquatic zone(s). The vegetation type(s) within the project area comprise grass/rush.

The report notes that there are 6 Natura 2000 sites within 15Km of the proposed afforestation, Boleybrack Mountain SAC (site Code 002032), the Cuilcagh-Anierin Uplands SAC (Site Code 000584), Lough Arrow SAC (Site Code 001673), Lough Arrow SPA (Site Code 004050) Lough Gill SAC (Site Code 001976) Unshin River SAC (Site Code 00189) and records an Appropriate Assessment (AA) screening decision to screen out the application on the basis that the location of the project area is within a separate water body catchment to that containing the Natura sites, with no upstream connection, and a subsequent lack of any

hydrological connection. In the case of Lough Gill SAC AA was screened out due to the absence of any aquatic zone within or adjoining the project area and 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 that concludes that the project, when considered in combination with other plans and projects, would not give rise to the possibility of a direct or indirect effect on the integrity of any Natura 2000 site in view of those sites' conservation objectives.

The Inspector's Certification Report also contains an assessment of the environmental factors relating to the proposed afforestation in order to determine whether the proposed afforestation requires an Environmental Impact Assessment Report (EIAR) and concludes that it is not necessary to subject the proposed afforestation to EIA.

The licence application was referred to Leitrim County Council and An Taisce. Leitrim County Council replied on 06/07/2020 stating that it had no objection to the proposal and set out 15 conditions relating to public roads to be included in the licence. An Taisce did not reply.

#### **Appeal.**

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

- 1 The decision to grant the licence is in breach of Section 11(a) and (d)(iv) of the Forestry Act 2014 as the Minister has not taken full consideration of all of her functions in protecting the environment.
- 2-4 The decision to grant the licence is not consistent with paragraph 34 of the State Aid Decision.
- 5 The EIA Screening is invalid as it did not take into account all criteria in Annex III of the EIA Directive.
- 6 The AA Screening procedure for this application is flawed as no consideration was given to the cumulative effect of the application in-combination with all other industrial plantations which may have a negative impact on the European sites listed.
- 7 The reply to Q6 and Q7 in the Inspector's Certification and the percentage of forest cover in this townland are questioned as is the validity of Q8, Q9 and Q10 in the Inspector's Certification.
- 8 The response to Q11 where the Inspector ticks S/A, is disingenuous and misinforms the Forest Service and the Minister of the fact that forest cover is a significant issue in the townland of Lugmeeltan as is obvious from the objections and a serious issue across all of County Leitrim.
- 9 The afforestation is hydrologically connected to Lough Allen which is a Priority Action Area and is the focus of the Catchment teams within LAWPRO and the EPA. The Shass Mountain Landslide in late June 2020 has caused serious pollution in the lake and this landslide continues to pollute the lake and the whole area has become very unstable. Therefore if this development was to proceed this would further exacerbate the pollution problem.
- 10 The decision to grant the licence will result in the destruction of the depleted High Nature Value lands at Lugmeeltan.
- 11 There is a failure in duty of care to the people of this area for not insisting on firebreaks.

#### **Hearing.**

At the hearing, the FAC had before it a Statement of Fact (SoF) dated 03/03/2021 confirming the administrative details of licence application CN86343 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 22/02/2021. The Inspector confirmed that the relevant AA procedure in operation at the time was applied, and that the proposed afforestation was screened out after Standard Operating Procedures were followed.

#### **Consideration by the FAC.**

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

Aerial photography including that submitted with the application show the land it is proposed to plant is agricultural grassland. The site is in two parts, Plot 1 north of a county road is bounded by forestry to the north and west and by agricultural grassland to the east and south. The smaller Plot 2 to the south of the county road is bounded to the west and south by forestry and to the east by agricultural grassland.

Soil types on the site identified on the EPA mapping are as Surface water Gleys and Groundwater Gleys, which are generally an acid, deep, poorly drained mineral soils and Blanket Peat.

The nearest identified waterbody to the site is the Cashel Stream (Bonet)\_10 approximately 175m west of site which flows south to north. The Water Framework Directive Cycle 2 Assessment of this river waterbody is that it is of Good status 2013-18 and that it is Not at Risk. The site lies in the Sligo Bay & Drowse Catchment and the Bonet\_SC\_020 sub-catchment.

The underlying Ground Water body is the Lough Allen Uplands IEGBNI\_SH\_G\_002 which has Good status and is Not at Risk.

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 Natura sites identified as being within 15km of the site are those contained in the Inspector's Certification.

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.

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.

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

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

#### **The Forestry Act 2014 and State Aid.**

Grounds 1-4 contend there are breaches of the Forestry Act 2014 and State Aid Rules. The FAC can address only the grounds of appeal that relate directly to the licence for afforestation under Article 7 of the Forestry Act 2014 and the Forestry Regulations 2017.

#### **EIA Directive.**

With regard to the appellant's contention that the EIA Screening did not take into account all criteria in Annex III. The FAC in considering this ground of appeal 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, 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. At 8.0Ha., the afforestation proposed is significantly sub-threshold for the mandatory submission of an EIAR.

The FAC noted that the appellant gives no indication which of the criteria in Annex III that are relevant to the proposed afforestation have not been addressed. The FAC further 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 the EIA process. 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. Having regard to the record of the decision and the submitted grounds and the nature, scale and location of the proposal the FAC is satisfied that the DAFM did not err in its decision concerning the EIA process.

#### **Appropriate Assessment Screening.**

With regard to the appellant's contention that *"no consideration was given to the cumulative effect of the application in-combination with all other industrial plantations"*. The FAC noted that the DAFM had carried out a report into possible in-combination effects which included; consultation of both Leitrim County Council's and An Bord Pleanála's planning database for planning applications in the area, the EPA, Leitrim County development Plan 2015-2021, forestry-related projects (either submitted and still under evaluation, with valid licences/approval in place or completed and approved) in the general vicinity of the project. The report concluded that; *"Individually, the project does not represent a source, or if so, has no pathway for an effect on any of the Natura site's listed in AA screening conclusions for individual Natura sites table. Consequently, the DAFM deems that there is no potential for the project to contribute to any effects, when considered in-combination with other plans and projects"*. The FAC concluded that the DAFM had, in fact, considered the cumulative effect of the application in-combination with other plans and projects

#### **Inspector's Certification.**

Questions 6 and 7 are part of the section on "Assessment to Determine EIA Requirement" of the Inspector's Certification and deal with the percentage of forest cover in the townland of Lugmeetan. The Inspector estimates the current forest cover at 12.71% (Q6) unchanged for five years ago (Q7). Questions 8 and 9 refer to the estimate of current forest cover within 5km at 36.74% and 33.25% five years ago.

Question 10 deals with the response that the Inspector does not consider that this application for afforestation of 8.0 Ha. will have a significant impact on the amount of forestry in either the townland or within 5km. The FAC noted that the appellant has adduced no figures or data to support this ground of appeal.

Question 11 of the Forestry inspector's certification asks, "*Is the amount and type of forest cover in this locality known to be a significant issue?*" The inspector has answered "S/A" (self-assessment, the standard response given when the Inspector has not personally been made aware of such issues). The FAC noted that there were 3 submissions only one of which raised the issue of the amount and type of forest cover in this locality being a significant issue.

#### **Connectivity to Lough Allen.**

The FAC noted that the site lies within the Sligo Bay Catchment as identified in the Water Framework Directive (WFD). Lough Allen lies in a different WFD Catchment, the Upper Shannon. Mapping shows the site draining to the Cashel Stream (Bonet)\_10 some 175m west of site, which in turn drains north to Belhavel Lough in the opposite direction to Lough Allen. The FAC further noted that the site was subject to a field inspection and that no special conditions regarding the protection of water quality were attached to the licence.

#### **High Nature Value Farmland.**

The appellant contends the granting of this licence will result in the destruction of the already depleted High Nature Value (HNV) lands at Lugmeeltan. 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. The FAC notes that the appellant has adduced no evidence to the contrary and the FAC is not satisfied that the DAFM evaluation of this particular site contained a serious error.

#### **The threat of forest fire to adjacent homes.**

The FAC noted the requirements set out in the Forestry Standards Manual 2015 stating that planting shall not take place within 60m of any dwelling or 30m with the written consent of the owner and that Condition 2 of the licence mandates compliance with the Forestry Standards Manual amongst others. The FAC also noted that the site itself and lands to the east and south are currently agricultural pasture, a type of vegetation and land management that is not conducive to the initiation or spread of fire.

#### **Conclusion**

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal and Statement of Fact submitted by the DAFM and a Consultant's report. 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 CN86343 in accordance 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,

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Iain Douglas,  
On Behalf of the Forestry Appeals Committee