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11<sup>th</sup> June 2021

**Subject:** Appeal FAC230/2020 in relation to afforestation licence CN85747

Dear [REDACTED]

I refer to your 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**

Afforestation licence CN85747 was issued by the Department of Agriculture, Food and the Marine (DAFM) on the 16<sup>th</sup> April 2020.

#### **Hearing**

An Oral Hearing of appeal FAC230/2020 was held by the FAC on the 20<sup>th</sup> April 2021. Attendees:

**FAC Members** - Mr Des Johnson (Chairperson), Mr Dan Molloy, Mr Pat Coman & Mr Luke Sweetman

**FAC Secretary** - Mr Michael Ryan

**DAFM Representatives** – Ms Mary Coogan & Mr Eugene Curran

#### **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 set aside and remit the decision to grant CN85747.

This licence is for the afforestation of 14.11ha across four plots with the erection of 1350m of stock/sheep fencing in Caherkereen, Co. Cork. The DAFM Inspector's Certification states the underlying soil type is predominately Podzols. The slope is predominantly flat to moderate (<15%) and the existing vegetation cover is comprised of Grass and Furze. The proposed planting is in four plots: Plot 1 (4.47ha) and Plot 3 (1.18ha) are Native Woodland Establishment plots composed of a mixture of Pedunculate oak, Birch and Additional Broadleaves (ADB). Plot 2 (4.52ha) and Plot 4 (3.94ha) are comprised of 85% Sitka spruce and 15% ADB. Ground preparation will include woody weed removal and mounding, there will be no fertiliser applied and no additional drainage is required. Angle-notch planting and manual vegetation control with herbicide applications in year zero and year one is proposed. There are dwelling setbacks in the north-west and north-east of the proposal.

The project lands are in the Lee, Cork Harbour and Youghal Catchment, the Sullane\_SC\_010 Sub-Catchment, and the majority of the application site is in the Sullane\_050 River Sub-Basin. The Sullane\_050 Waterbody was assigned 'High' status and deemed to be 'Not at Risk' under the

Environmental Protection Agency (EPA) 2013-2018 reporting period. A section in the north-west of the proposal is within the Sullane\_040 Sub-Basin and a small area of hedgerow in the south of the proposal is in the Lee (Cork)\_050 Sub-Basin. The nearest EPA-mapped watercourse is c.700m to the west/south-west.

The Inspector's Certification document indicates that the application site is free of shell marl or highly calcareous soils, is located in an area that is not acid sensitive or sensitive for fisheries and not within a Freshwater Pearl Mussel 6km Zone. The site is not within 3km upstream of an NHA, pNHA, SAC, SPA, or National Park and is not within a Prime Scenic Area as per the County Development Plan and there are no High Amenity Landscape considerations. There is a Recorded Monument (a House) located on the northern boundary of the southernmost plot. The Inspector's Certification states that the approximate percentage forestry cover in the Townland is 15.89% and 15.32% within 5km of the proposal. The application, together with new afforestation of three years or less within 500m is 26.64ha. The application, together with other Form 1 (Pre-Approval) applications within 500m and approved but not yet planted is 14.11ha. The percentage of forest cover currently in the underlying Waterbody is 32.96%.

The application was submitted along with associated maps and there were no referrals to Statutory Bodies but the application was referred to the DAFM Forestry Inspectorate's Archaeologist. The Archaeologist responded with site-specific conditions to be attached to the licence along with an annotated map showing the location of the Recorded Monument at issue. In processing the application, the DAFM completed a Stage 1 Appropriate Assessment (AA) Screening which screened seven European sites within 15km of the proposal. All of these sites were screened out for the following reasons:

- **Bandon River SAC, Killarney National Park, MacGillycuddy Reeks and Caragh River Catchment SAC, Mullaghanish Bog SAC, Mullaghanish to Musheramore Mountains SPA, St Gobnet's Wood SAC;**
  - The location of the project area within a separate waterbody catchment to that containing the Natura site, with no upstream connection and the subsequent lack of any hydrological connection.
  - The absence of any significant relevant watercourse(s) within or adjoining the project area.
  - Mandatory adherence to standard safeguards integral to the project, as set out in the application and in published Forest Service guidelines, requirements and procedures in particular.
- **The Gearagh SAC, The Gearagh SPA;**
  - The absence of any significant relevant watercourse(s) within or adjoining the project area.
  - Mandatory adherence to standard safeguards integral to the project, as set out in the application and in published Forest Service guidelines, requirements and procedures in particular.

The DAFM considered the potential for the proposal to contribute to an in-combination impact on European sites. Various planning websites were consulted along with the DAFM's internal records for other plans and projects, focusing on the general vicinity of the project area in the River Sub-Basins (Sullane\_040, Sullane\_050, Lee (Cork)\_050). The DAFM concluded that the proposed development, when considered in combination with other forestry and non-forestry plans and projects, "will not give rise to the possibility of an effect on the Natura site(s) listed above."

The DAFM issued the licence on the 16<sup>th</sup> April 2020 with relatively standard conditions 1 - 12 and condition 13 - "Additional environmental & silvicultural conditions":



- Do not plant Willow, allow it to colonize naturally but controlled.
- Observe Archaeology recommendations.
- Adhere to Forestry and Archaeology guidelines.
- All guidelines to apply.
- Specific Archaeology conditions including a 30m exclusion zone are listed and the archaeology report and map were attached to the licence also.

There is one appeal against the licence. The written grounds of appeal were considered in full by the FAC and are summarised below:

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- No assessment has been made of the cumulative effects as they exceed 50ha and EIA is required.
- The Inspector found that there may be an effect and, as such, Appropriate Assessment is required.
- The decision does not comply with the provisions of the EIA and Habitats Directives.
- There is an obligation on the FAC to comply with European law and to achieve the result envisaged in the Directives.

The DAFM provided a written response to the grounds of appeal in the form of a Statement of Facts to the FAC: "The application was not field inspected due to Covid-19 restrictions. However, there is no hydrological connection or environmental threat apparent on iFORIS. In addition, a large portion of this application is for native woodland establishment."

The FAC held an Oral Hearing on the 20<sup>th</sup> April 2021. The FAC sat remotely for this hearing. The DAFM participated remotely and neither the appellant nor the applicant participated. The DAFM detailed their processing of the application. The DAFM stated that the nearest EPA river was a considerable distance to the north and that the proposal is not hydrologically connected to the Gearagh SAC or to the Gearagh SPA or to any other European sites. The DAFM confirmed that the broadleaf species to be planted would be located in the north of the proposal. The DAFM confirmed that the in-combination report was considered prior to the making of the decision to grant CN85747. The FAC queried the percentage forest cover within the underlying waterbodies and whether the value of c.33% was an average value for the three underlying waterbodies or specific to the Sullane\_050, within which the majority of the proposal is located. The DAFM were unable to confirm this information. The FAC questioned the DAFM regarding their listed screen-out conclusions for St Gobnet's Wood SAC and the Mullaghanish to Musheramore Mountains SPA. The DAFM confirmed that the proposal is within the same Sub-Catchment as these European sites but that the proposal does not share a River Sub-Basin with either. Responding to further FAC questions, the DAFM stated that all of the European sites were screened-out based on the information available on iFORIS and that, in screening-out these sites, the DAFM took into consideration the proposed development's adherence to mandatory safeguards and guidelines.

The FAC considered the appellant's grounds of appeal. The FAC noted that the appellant made a submission regarding the functioning of the FAC which is not related to the decision of the DAFM to grant afforestation licence CN85747.

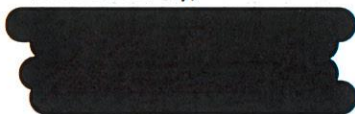
The FAC considered the appellant's submissions that the decision does not comply with the EIA Directive and that "no assessment has been made of the cumulative effects as they exceed 50ha and EIA is required." The FAC noted that the proposal was assessed by the DAFM to determine the requirement for EIA using the Inspector's Certification process in iFORIS. The DAFM considered the nature and scale of the proposal and its potential to have an impact on the environment across a range of criteria

including, inter alia, an assessment of potential effects on water quality, designated sites, protected species, archaeological and landscape considerations, and the amount of existing forest cover and approved afforestation in the immediate surrounds of the proposal and within the underlying Waterbody. The evidence before the FAC is that the DAFM considered the cumulative afforestation in the vicinity and recorded that the proposed development, together with new afforestation of three years or less within 500m is 26.64ha and the application together with other Form 1 (Pre-Approval) applications within 500m and approved but not yet planted is 14.11ha. The proposal, for 14.11ha of afforestation, is considerably sub-threshold for mandatory EIA under Irish Regulations where the threshold for such mandatory assessment is set at 50ha. Having considered the evidence submitted by the DAFM and having regard to the nature and scale of the proposal, the location, the type and characteristics of potential impact, and the screening procedures followed by the DAFM before concluding that an EIA is not required in this case, the FAC is satisfied that the DAFM had adequate information before it to enable a screening for EIA and concurs with the DAFM's conclusion in this regard.

The FAC had regard to the appellant's contention that the decision does not comply with the requirements of the Habitats Directive. The FAC considered the AA procedures adopted by the DAFM in processing this licence application. The DAFM completed a Stage 1 AA Screening of seven European sites within 15km of the proposal and all seven sites were screened out for Stage 2 AA with reasons stated. The absence of any significant relevant watercourse(s) within or adjoining the project area and the subsequent lack of any hydrological connection between the proposal and the Natura 2000 network were among the reasons that European sites were screened out for Stage 2 AA. However, the evidence before the FAC, which was provided by the DAFM at the Oral Hearing, is that the DAFM took into consideration the mitigating effect of mandatory safeguards and guidelines when assessing the potential for the proposal to have a significant effect on the screened European sites. The FAC considers that it is inappropriate, at AA Screening stage, to take into account measures intended to avoid or reduce potential harmful effects on a European site(s).

Based on the information before it, as outlined above, the FAC considered that the DAFM made a significant error in their AA Screening process. In these circumstances, the FAC decided to set aside and remit the decision of the Minister to issue CN85747 for the DAFM to complete a Stage 1 AA Screening of the potential for the proposed development to have a significant effect on European sites and, if necessary, an Appropriate Assessment, before making a new decision in respect of the proposed development.

Yours sincerely,

A black rectangular redaction box covering the signature of Luke Sweetman.

Luke Sweetman on behalf of the Forestry Appeals Committee