



[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

27<sup>th</sup> May 2021

**Subject:** Appeals FAC 283/2019 and 305/2019

Dear [REDACTED]

I refer to appeals made to the Forestry Appeals Committee (FAC) in relation to the afforestation licence CN84015 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 the parties to the appeal.

#### **Background**

Afforestation licence CN84015 was granted by the Department of Agriculture, Food and the Marine (DAFM) on the 30<sup>th</sup> September 2019.

#### **Hearing**

An oral hearing of appeals FAC 283/2019 and 305/2019 in relation to licence CN84015, of which all parties were notified, was held by a division of the FAC on 8<sup>th</sup> February 2021.

In attendance:

FAC Members:

Mr. Myles Mac Donncadha (Chairperson), Mr. James Conway,  
Mr. Seamus Neely and Mr. Derek Daly.

Appellants / Representative(s):

[REDACTED]  
[REDACTED]

Applicant / Representative(s):

Department Representative(s):

Secretary to the FAC:

Mr. Seppi Hona & Ms. Mary Coogan  
Ms. Emma Guerin

A report authored by Mr. Liam Madden was submitted to the FAC on February 5<sup>th</sup> 2021 and Mr. Madden was invited by the FAC to present any additional material contained therein in the course of the Oral Hearing. Representations were also made to the FAC prior to the hearing that the objections raised by Mr. Seamus and Mr. Patrick Prunty should be heard as two appeals. While unable to split the proceedings into two appeals at the hearing, the FAC used every endeavour to ensure the opinions of both Seamus and Patrick Prunty were heard at the Oral hearing. The appellants grounds of appeal were also presented in submissions received. At the Oral Hearing the FAC used the original grounds of appeal as the basis of reviewing this case, but the hearing also benefitted from the views of the appellants and their representatives as expressed on the perceived effects of the proposal. A request was also received to extend the time available for the hearing, which was granted, and the period was extended to allow all parties express their views.

#### **Decision**

Having regard to the evidence before it, including the record of the decision 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 regarding licence CN84015.

### **Licence**

The proposal is for afforestation of 10.7 ha at Kiltycreevagh, Co. Longford, comprising approximately 9 ha spruce and 1 ha birch, in two blocks approximately 400m apart. Ground preparation would include woody weed removal and mounding, the planting method is to be slit planting, with up to 250kg granulated rock phosphate per hectare to be applied and herbicide control may be required in years 0, 1 and 2. Road access is already in place.

The soil types underlying the project area are described in DAFM reports as being predominantly podzolic in nature and the slope is stated to be flat to moderate (<15%). The project area is crossed by/adjoins an aquatic zone. The vegetation type within the project area comprises grass/rush. The watershed between the Water Framework Directive (WFD) catchments of Upper Shannon (ID 26C) and Erne (ID 36) lies within the proposal area with approximately 60% of the area located in the latter. The respective sub-catchments are Black river (ID 26C\_2) to the south and Cullies (36\_19) to the north and the river waterbodies draining each are classed as having "Moderate" status in the WFD 2013-2018 status assessment.

Referrals were made to Longford County Council and An Taisce. A response was received from Longford County Council stating they had no objection to the proposal, provided that standard precautions were made regarding existing services, debris on public roads, damage to public roads, clearance of storm drains and prior notification of the commencement of works. No reply is on file from An Taisce. Eight submissions were received during June, July and August 2019.

The DAFM desk and field assessed the proposal and undertook a screening for Appropriate Assessment that identified three European sites within 15km; Lough Forbes Complex SAC (code 001818), Clooneen Bog SAC (code 002348) and Ballykenny-Fisherstown Bog SPA (code 004101). All three sites are approximately 14 kms from the proposal site at their nearest point. The screening concluded that all three could be screened out due to the absence of any of the qualifying habitats within or adjacent to the project area. In the case of Ballykenny-Fisherstown Bog SPA the proposal was also said to be outside the foraging range of the qualifying interests of the SPA. An in-combination assessment was carried out for the proposal examining non-forestry projects including dwellings, septic tanks, etc in the relevant townlands. The Longford County Development Plan was also reviewed in addition to other forestry-related projects before concluding that, when considered in combination with other plans and projects, there was no potential for the project to contribute to any significant effect on any European Site.

The licence was approved on 30<sup>th</sup> September 2019 with standard conditions applying. There are two appeals against the decision. The grounds of the first appeal (FAC 283/2019) are in the nature of a broad statement that, based on the information available to the public, any approval would not be in compliance with the Environmental Impact Assessment and Habitats Directives, and various court judgements are listed in support of this contention.

The written grounds of the second appeal (FAC 305/2019) are contained in a report compiled by the appellants Teagasc Advisor. Submitted grounds include the large number of animals being housed by the appellant in farm buildings and that additional forest cover to the west-south-west would impede the ventilation that is vital to their well-being; impeded airflow will also cause the adjoining lands to become wetter and less productive over time; shading from forestry will decrease soil temperature and increase soil moisture content, ultimately leading to higher costs due to a decreased sward productivity and a longer cattle housing period; wetter fields will result in a reduced time window for slurry spreading, leading to higher fertilizer costs; machinery use on wetter fields will lead to increased soil compaction and a higher proportion of weed species in the sward, requiring additional concentrates to be fed to the housed cattle over the winter period.

Other factors mentioned in the grounds of appeal include the area being in a prime scenic area in the County Development Plan and rich in culture and history; the attractiveness of which will be reduced by the addition of more forestry. Sheep are also mentioned as possible prey for predators brought in through increased forest levels. It is also submitted that the proposal would cause shading of a house owned by the

son of the land owner and affect the mental state of the occupants and the chances of successful farm succession, leading to further rural depopulation.

In response to a FAC request on October 31<sup>st</sup> 2019 seeking further information of in-combination assessment for the three identified Natura 2000, a site-by-site re-iteration of the in-combination analysis undertaken to inform the decision was provided. Confirmation was also provided that the AA Screening process excluded the standard mitigation measures in its reasoning, as is required under these procedures.

In a statement to the FAC regarding the granted licence for the afforestation proposed under CN84015, the DAFM indicated that the decision was issued in accordance with procedures, S.I. 191/2017 and the 2014 Forestry Act and that the Department is satisfied that all criteria as outlined in the standards and procedures that follow in the statement have been adhered to in making a decision on the application. The statement from the Forestry Inspector indicates that the Notice of Appeal Form has been read and considered. During the oral hearing the District Inspector for DAFM described conducting a field and desk inspection and how he had reviewed the grounds of appeal in full.

The second appellant was in attendance at the oral hearing and was able to contextualise for the FAC the written grounds of appeal. Regarding the background to the farm, he described how considerable investments had been made over an extended period to develop it but that pre-existing forests had already raised the water table and was impeding airflow in an area he described as having 'bowl-like' topography. There was no appreciation 30 years ago, it was submitted, that grass production would be reduced through the introduction of forestry. The farm would one day be inherited by his son and that allowing this development to proceed would negatively impact on this succession plan. The lack of air circulation would cause cattle to get sick when over-wintered in poorly ventilated sheds. Having the forest "4m from my back door" would also be unacceptable and block all views. It was clarified that the focus of the appellants objections was the northern block (of the two blocks proposed).

Some clarifications were offered by the forester for the applicant, who described how a 60m buffer was required around all existing dwellings (unless a lesser one was agreed between all parties) and that in this case the 60m setback was observed and plot 2 (an area of 1.4 acres) was being left unplanted around the aforementioned dwelling. In the area being planted (plot 1), fifteen percent broadleaves (birch species) are proposed and these will form a band of 10-12 metres (at a minimum) at the boundary adjoining the plot 2 open area. The forester stated that at the time of planting they could further increase the depth of this buffer if the layout of the site allows and the broadleaves are not needed on other boundaries. The application includes detailed maps covering setbacks from dwellings, watercourses, roadways and transmission lines. It identifies the Black river as being adjacent to the southern boundary of the southern block and proposes a 20m buffer at that location, including the use of silt traps, and all of these form an integral part of the application which was approved.

The oral hearing also heard from the applicant, who described how the family wanted to retain ownership of the land but that no family members had expressed interest in continuing to farm. The applicant further described how negotiations had taken place with the second appellant regarding the purchase of the land but that these had broken down. It was under these circumstances that the applicant had chosen to afforest a portion of their farm, availing of the financial incentives to do so.

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 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 (nor clear-felling) 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 decision under appeal

relates to a licence for the afforestation of an area of 10.7 ha, which is significantly sub-threshold for mandatory environmental impact assessment (EIA), as set in Irish Regulations. The FAC finds that the DAFM considered the application across a range of criteria, including water, designated areas, landscape and cumulative effects, and determined that the DAFM did not err in its decision that EIA was not required in this case.

The FAC considered the Appropriate Assessment screening undertaken by the DAFM. The grounds of appeal do not refer to any specific European site, pathways or effects of concern. The FAC found that the DAFM undertook a screening for Appropriate Assessment in this case that assessed Natura 2000 sites within 15 km of the project area and three sites were identified. The FAC examined publicly available information from the NPWS and EPA and identified the same three sites. Each site is considered in turn and the reasons for the screening conclusions reached are provided. The FAC is satisfied that there was no need to extend the radius in this case. 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 DAFM recorded, prior to issuing the licence, a consideration of other plans and projects, including forestry and non-forestry projects, and they concluded that the project, when considered in combination with other plans and projects, will not give rise to the possibility of a significant effect on any Natura 2000 site. Based on the information available to it, the FAC is not 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.

Regarding other contentions raised with regard to the effect of forests on grass productivity, shading and raised water table the FAC reviewed the material submitted by all parties to the appeal, although it was not clear to the FAC that the views expressed in the Teagasc advisor's report were those of Teagasc or that of the author alone. It is clear that the appellant has developed an intensive farming business that needs extensive areas for slurry spreading and is sensitive to changes in sward composition and productivity. It was also made clear at oral hearing that the appellants (FAC 305/2019) objections are to Plot 1 (8.1 hectares of Sitka spruce and birch) in the block nearest their main holdings. However, given the depth of setbacks; use of slow growing broadleaves; and pre-existence of forestry and hedgerows in the vicinity of the proposal; it is difficult to see how shading will have a significant negative effect in comparison to current prevailing conditions. The northern area in Plot 1 contains a highpoint (marked as 324 feet on the 6" Cassini maps) and from there a vague ridgeline extends south east. The connection between the afforestation of this ridge and significantly elevated water tables in the two sub-catchments is considered not to be strongly established by the appellants. Similarly, a strong negative effect on airflow is difficult to establish, given the pre-existence of hedging, the buffer of slow growing broadleaves in Plot 1 and the 1.4 acre buffer left unplanted in Plot 2.

Regarding general visual impact, the Northern Drumlin Lakeland landscape unit as defined in the Longford County development Plan 2015-2021 encompasses the proposal site and it states "the sensitivity of much of this landscape can be classified as LOW to MEDIUM with some HIGH sensitivity in the vicinity of the lakes and designated scenic routes". The proposal area is not relevant to any scenic route but is in an area defined as a "broad zone" (appendix 6, Longford CDP) and where "the planning Authority will control development". Given that forestry is exempted development under the relevant legislation and that Longford County Council raised no objection in their response (on this or any other grounds) the case for a strong impact on visual amenity has not been established.

In considering the appeal in this case the FAC had regard to the record of the decision, the submitted grounds of appeal, other submissions received, the submissions made, and clarifications obtained at the oral hearing. The FAC is not satisfied that a serious or significant error or a series of errors was made in making the decision or that the decision was made without complying with fair procedure. In deciding to affirm the decision of the Minister regarding licence CN84015 in line with Article 14B of the Agricultural Appeals Act 2001, as amended, the FAC considered that the proposed development would be consistent with Government policy and Good Forestry Practice.

Yours sincerely,

[Redacted signature]

---

Mr. Myles Mac Donncadha (on behalf of the Forestry Appeals Committee)

