



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

1<sup>st</sup> October 2021

**Subject:** Appeal FAC 856 of 2020 regarding licence CN84707

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 Hearings**

Licence CN84707 for afforestation of 6.22 ha at Carrownagilty Co. Sligo, was approved by the Department of Agriculture, Food and the Marine (DAFM) on the 10<sup>th</sup> of November 2020.

An initial hearing of appeal FAC 856/2020 was held by a division of the FAC on the 7<sup>th</sup> of July 2020. The FAC members in attendance at the hearing were Mr. John Evans (Deputy Chairperson), Mr. Vincent Upton, and Mr. Iain Douglas. After a preliminary examination of the evidence before it, the division determined that an Oral Hearing should be held to properly and fairly determine the appeal.

An oral hearing of appeal FAC 856/2020, of which all parties were notified, and representatives of the DAFM and the Appellant attended, was held by the FAC on the 28<sup>th</sup> of July 2021.

In attendance at Oral Hearing:

Department Representative(s):

Ms. Mary Coogan, Mr. Martin Regan,

Appellant:

[REDACTED]

Applicant / Representative(s):

[REDACTED]

FAC Members:

Mr. John Evans (Deputy Chairperson), Mr. Vincent Upton, and Mr. Iain Douglas.

Secretary to the FAC:

Ms. Charon Reamsbottom.

#### **Decision**

Having regard to the evidence before it, including the licence application, processing by the Department of Agriculture, Food and the Marine (DAFM), the grounds of appeal, and all other submissions, the Forestry Appeals Committee (FAC) has decided to vary the decision regarding licence CN84707.

### Licence and Departmental file

The licence decision in this case pertains to the afforestation of lands on a stated site area of 6.22 ha at Carrownagilty Co. Sligo in two plots. The licence specifies that the larger plot will be 85% planted with Sitka Spruce (5.13ha) and the smaller plot will be retained as a bio-plot. A pre-screening report which is on file describes the site as follows:

*The exposed, enclosed project area is located on a moderate south-facing slope at approximately 190-220m on poorly drained peat soils. The main habitat on site is rush-dominated wet grassland (GS4). There is a derelict dwelling (BL3) and a small upland eroding watercourse (FW1) on site. It is currently used for sheep grazing. The surrounding area is dominated by conifer plantation (WD4), cutover bog (PB4) and wet grassland (GS4) with occasional dwellings (BL3) and a windfarm ca. 1km to the east at Carrownyclovan. The project area is located within the WFD sub-catchment Feorish [Ballyfarnon]\_SC\_010 and stream on site does not drain into any European site. There are no protected species or habitats known within the project area. The project area is located within Sligo CDP 2017-23 LCA: Sensitive Rural Landscape and has a high sensitivity (IFORIS, October 2020). To Note: The site is located ca. 1km to the west of Carrane Bog NHA 002415, an upland blanket bog site which is located upon the same site as the Wind farm at Carrownyclovan. This habitat is not present on site.*

The application is recorded by DAFM has having been received on the 5<sup>th</sup> of September 2019. On file are a bio-map, location map, fencing map, landscape map, site notice and photo of site notice in situ. A request for supporting documentation is on file dated the 16<sup>th</sup> of December 2019, requesting/advising that the applicant exclude and old dwelling on the site from the application area, identify ownership of adjacent dwelling and liaise with owners re setbacks, and as the site is in a high landscape sensitive area to prepare and submit landscape design plan.

A revised bio map, dated 2<sup>nd</sup> of September 2019 is on file, with the derelict dwelling excluded and a note stating "60m setback agreed", and that an area to the south of an ESB power line is too small for planting A landscape map is also on file, which was requested by DAFM following a site inspection and was received on the 14<sup>th</sup> of February 2020, which indicates planting of ADB on high ground and planting of ADB facing H1 (adjoining house). Various iterations of the Inspector's Certification report are on file reflecting the progress of the processing of the licence. One of these (CN84707 Insp Certification 1<sup>st</sup>.pdf) notes a field and desk assessment.

Three third-party submissions are on file. These submissions object to the proposal for reasons that include an assertion that Hen Harrier are nesting on the site, the level of forestry in the area, assertion that it would not be possible to issue a licence in compliance with the EIA and Habitats Directives, loss of light, loss of biodiversity, impacts on community and forest, and a history of poor forestry management in the area. One submission proposes a reduction in the area for afforestation.

The file was referred to the IFI/North-western Regional Fisheries Board on the 12<sup>th</sup> of September 2019, and An Taisce on the 16<sup>th</sup> of December 2019, with no response on file in either case. The file was also referred to Sligo County Council on the 16<sup>th</sup> of December 2020 with a response on file that was received by DAFM on the 6<sup>th</sup> of January 2021. The response notes that the site is in the source catchment area of a public water or group water scheme and highlights the need for consideration of the WFD and adherence to the Environmental Requirements for Afforestation. A buffer zone of 25m from watercourses and 10m of public roads is requested. Various other advice and requirements in relation to the public road are submitted in the response.

The pre-screening report referred to above is on file dated the 27<sup>th</sup> of October 2020 and this was prepared by a Consultant Ecologist and a Forester. The report identifies seven European sites and concludes that these can be screened out for Appropriate Assessment. An export of the EPA AA tool is also provided and is on file, which supports the screening conclusion. The Inspector's Certification Report (CN84707 Insp Certification 1<sup>st</sup>.pdf) includes a screening for AA. This records a screening out for the seven European sites mentioned in the pre-screening with several of these not including a reason(s). The Inspector's Certification report also includes a consideration of EIA requirement, and this concludes that the project does not require an EIA.

Separately there is an AA Screening Determination (AASD) on file, prepared by the DAFM ecology section, dated the 5<sup>th</sup> of November 2020. This records consideration of European sites in a 15km search radius of the project site. The sites are:

1. Boleybrack Mountain SAC 002032
2. Bricklieve Mountains and Keishcorran SAC 001656
3. Lough Arrow SAC 001673
4. Lough Arrow SPA 004050
5. Lough Gill SAC 001976
6. Union Wood SAC 000638
7. Unshin River SAC 001898

Each site is screened out for stage 2 Appropriate Assessment, with detailed reasons provided in each case. The AASD includes a statement:

*As set out above in Table 1, the following European Sites were originally screened in on the recommendation of the District Inspector, but are now screened out, following this verification process: Boleybrack Mountain SAC 002032; Bricklieve Mountains and Keishcorran SAC 001656; Lough Arrow SAC 001673; Lough Arrow SPA 004050; Lough Gill SAC 001976; Union Wood SAC 000638; Unshin River SAC 001898. This reversal of the original DI recommendation is based on the rationale provided above and the in-combination assessment on file for this project (see CONTACTS dated 09/10/2020).*



The AASD refers to an in-combination report, which is on file, and this records planning searches on the week of the 9<sup>th</sup> of October 2020 of Sligo County Council, the EPA, An Bord Pleanála, and DAFM. The in-combination report also gives consideration to the Sligo County Development Plan 201-2023.

On file there is also an Ecology Report prepared by the DAFM ecology unit dated the 5<sup>th</sup> of November 2020. This notes that while potential impacts on European sites were ruled out as part of the screening for Appropriate Assessment, a water course running North-South through the site (FEORISH (BALLYFARNON)\_010) flows into an EPA High Status Objective Waterbody (FEORISH (BALLYFARNON)\_020), and that this was classified as High Status by the EPA in 2010 -2015 and the maintenance of High Status is a legal requirement of the WFD (2000/60/EC). The report then goes on to make six specific recommendations for licence conditions.

### **Appeal and Statement of Fact**

There is one appeal (FAC 856/2020) to the decision to grant the licence. The submitted grounds include photographs, and these together with the full grounds of appeal are available on the FAC file. The grounds in summary are:

1. Biodiversity. The appellant submits that their 2-acre plot is surrounded by predominantly Sitka Spruce forest on 3 sides: West, South and North, and has been since the appellant purchased their plot. The proposal would place forestry on their east, which is currently open land, with a natural habitat for a number of named species.
2. Water quality. The appellant notes the gradient and raises concerns regarding a well on their site.
3. Natural Light. The appellant notes existing impact, and likely future impact from the current proposal.
4. Security. The submits that the proposed planting will result in a lack of sight to neighbouring houses resulting in security concerns.
5. Forest Management. The appellant cites poor management of the forest to the west, and also notes that the proposed site includes an abandoned building and submits concerns regarding previous and future dumping that may occur.

The appellant states they recognise the economic right of the applicant to plant and proposes that planting be confined to the North of the site, and also offers to purchase the land.

DAFM submitted a Statement of Fact (SoF) to the FAC dated the 17<sup>th</sup> of May 2021, in which the administrative details of the processing of the licence as outlined above are confirmed, and it stated that the decision was issued in accordance with DAFM procedures, SI 191/0217 and the 2014 Forestry Act. The District Inspector submits that a desk audit and field inspection was carried out on the 21<sup>st</sup> of

November 2019, and that the concerns raised by the appellant were addressed prior to recommending approval.

### **Oral Hearing**

Following a preliminary examination of the facts by the FAC at a hearing on the 7<sup>th</sup> of July an Oral Hearing was held on the 28<sup>th</sup> of July 2021. At the oral hearing, the appellant elaborated on the grounds of appeal submitted. In particular the appellant disputed that there had been agreement reached in relation to a sixty metre setback from their dwelling house and characterised interactions with the applicant's representative as an inconclusive discussion in which the nature of the proposal was discussed. The applicant further submitted that even were a sixty-metre setback to be imposed, that this should be from a garage that is located to the east of the dwelling house which is used as a workshop.

The DAFM submitted that the sixty-metre setback would normally be from the dwelling house and added that were the forestry to the west of the appellants house to be being planted today, this same setback would be imposed, and that when that forest is felled it would be expected that this would be imposed as a condition of replanting. It was further submitted that on foot of the site inspection several changes were required of the applicant, specifically the planting of native trees to the east of the appellants house and the exclusion of an area around a derelict house on the project site. It was also submitted that in the course of the site inspection this derelict house had been inspected, and while in disrepair there was no sign of the dumped materials as described by the appellant.

In answer to questions from the FAC, DAFM agreed that the conditions suggested in the ecology report were not included in the licence conditions and that their absence was an administrative oversight, but submitted that the majority of these conditions, if not all, formed part of the various standards and guidelines referred to in the licence. DAFM submitted that the revised planting plan associated with the application included a significant quantity of native trees, and that this would mitigate the effects of forestry in the vicinity of the appellant's house, which was acknowledged to be significant.

### **Consideration by the FAC**

In considering the grounds of appeal that FAC had regard for: the written grounds of appeal; the submissions made in writing and at an oral hearing; the record of the processing of the decision by DAFM; publicly available information such as that provided by the EPA, the OSI and DAFM; and the various publicly available guidance and standards operated by the Forest Service.

In the first instance the FAC considered the ground of appeal relating to the biodiversity of the project site and the vicinity in which it is located. The committee noted that DAFM had conducted a screening for appropriate assessment and had not recorded any Natura site for which the project was likely to have a significant effect. The project site is not within or immediately proximate to any site designated or proposed for the protection of habitats or wildlife, such as a Natural Heritage Area, the nearest such site being the Carrane Hill Bog NHA which is designated for peatlands and is ca. 900m to the east of the proposed planting. The committee also noted that the Inspector's Certification Report also includes a



consideration of the requirement for an Environmental Impact Assessment Report, which considered the project across a wide range of criteria and determined that no such EIA was required. The FAC is not satisfied that an error was made in making the decision in relation to the biodiversity aspects of the proposed site.

Regarding water quality, the status of *sub-catchment Feorish[Ballyfarnon]\_SC\_010* waterbody was classed as 'Good' in the Water Framework Directive 2013-2018 monitoring cycle assessment. Application maps (bio-maps) show setbacks from this water course of 10m (E-F) and 20m (G-H) based on soil type, however it is not possible to discern the markings E, F, G or H on these maps. The FAC considers this to be an error but having regard to the pre-screening report, existing conditions and the DAFM Ecology Report prepared it does not consider that this would represent a serious or significant error. A DAFM Ecology report, dealing with the presence of the watercourse, is on file and this notes there is a potential of deterioration in water quality leading to High Status Objectives for downstream waterbodies not being achieved and makes six specific recommendations. The committee FAC examined the additional conditions attached to the approval. The FAC finds that the list of included sections in the Approval Letter does not include the 'Ecological Report' nor its recommended conditions and no reasons were provided for this on the record or at the oral hearing. Having regard to the nature, scale and location of the proposal, the FAC considers that the failure to reflect the recommendations of the Ecology Report which related, in part, to obligations under the Water Framework Directive, in the licence conditions, in light of comments by that ecologist regarding potential deterioration in water quality, is a serious error in the making of the decision and that the licence conditions should be varied to include adherence with the measures outlined in the Ecology Report (05/11/2020).

In relation to the grounds relating to natural light, security, and forest management, the FAC notes that enforcement of forestry licence conditions is a matter for DAFM, and does not fall within the remit of the FAC. The FAC also notes that the conditions of the licence require a 60m setback from the appellant's dwelling house in line with the guidance provided in *Environmental Requirements for Afforestation 2016* (DAFM, 2016), and that these are a minimum setback where agreement is not reached with a house owner. The section of this guidance dealing with building setback also includes the following guidance:

*Additional design:*

- *Setback distance is most critical when a building is surrounded by forest on two or more sides.*
- *Based on the immediate landform / topography, vary the setback to avoid artificial lines and to create a naturally undulating forest edge.*
- *Consider retaining locally important views from the dwelling, by introducing open spaces through the forest. Also introduce open spaces that highlight natural features visible from the dwelling.*

- *In relation to setbacks from dwellings, setback planting is encouraged within the 30 m to 60 m zone, if agreed to by the neighbouring dweller.*

The appellant has submitted at oral hearing that no agreement has been reached in relation to a setback, that existing forestry currently surrounds the site on three sides and that the existing forestry to the west in particular has a material impact on their property. Furthermore, at the oral hearing, DAFM has accepted that were the planting to the west to be planted today, an increased setback would be required. While the Appellant contended that the 60-metre setback was never agreed with the Applicant's Forester, the FAC considered that this setback reflects the requirements outlined in the Forestry Standards Manual (2015) and the Environmental Requirements for Afforestation (2016) with written agreement only required in relation to setbacks less than this distance.

The FAC had regard to the revised landscape map provided by the applicant, the topography of the site, the relationship of the appellant's house to the road and nearby houses, the details of the application, and the current conditions of the licence. At the time of consideration by the FAC, the area to the south of a power line is excluded from planting, while plot 850 as marked on the various maps provided is to be retained as a bio-plot (i.e. unplanted), with 5 rows of ADB facing H1. The FAC gave consideration as to whether it was possible to introduce open spaces that would provide lines of sight to other dwelling houses, in particular a house to east of the appellant's house but determined that given the nature of the site and the landscape generally this is not feasible. Planting would not take place directly south of the Appellant's dwelling and the view to the public road directly south would not be impeded. The retention of unplanted lands around the ESB line and to the south of this corridor would also provide for wider views from the property to the public road. However, considering the relationship between the appellant's house and the road, the FAC formed the view that the portion of plot 834 that approaches the boundary of the appellant's land to the south of plot 850 and to the north of the power line will unnecessarily create a sense of encirclement of the appellant's dwelling. The FAC is satisfied that DAFM have not adequately taken into account the increased sensitivity required when a building is surrounded by forest on two or more sides as outlined in the guidance, and have made an error in granting the licence without conditions to mitigate against encroachment and isolation, , and that the proposal In reaching this conclusion, the FAC is of the view that the licence should be varied to include suitable conditions. The FAC does not accept that the 60m setback should apply from the appellant's garage, which it is submitted is a workshop and as such does not fall within the meaning of a dwelling house. The FAC therefore conclude that in addition to the bioplot indicated for plot 850 an additional setback should be applied from the private laneway to the west of plot 834 (plot 1) of 30m to remain unplanted, with a minimum of 5 rows of broadleaf planting to be included between this and the planting of Sitka Spruce, not to include the corridor provided for the power line. This would be in addition to the 60-metre dwelling setback. The FAC considers that this would provide for increased views to the south and greater connectivity with the public road.

In considering the appeal in this case the FAC had regard to the record of the decision, the submitted grounds of appeal, and all submissions received. The FAC concluded that a serious error was made in the processing of the application in this case and is therefore varying the decision of the Minister regarding licence CN84707 in accordance with Article 14B of the Agricultural Appeals Act 2001, as amended, such that condition 5 be updated to read:

- 5. *Any additional conditions, that are over and above what is specified in the application.*
  - o *Plot 850 to be retained as a biplot*
  - o *An unplanted setback of 30m to apply from the private laneway at the western boundary of plot 834 (plot 1) in addition to the 60-metre setback from the dwelling.*
  - o *A minimum of five rows of additional broadleaves to be planted to the east of this setback or biplot as applicable, not to include the corridor provided for power lines.*
  - o *Exclude ruins of old house at Form 2 stage,*
  - o *Adhere to all six recommendations of the DAFM Ecology Service in its Ecology report of the 5<sup>th</sup> of November 2020.*
  - o *Adhere to forestry & water quality guidelines,*
  - o *All guidelines to apply*

In varying the decision, the FAC considered that the proposal would be in keeping with Good Forestry Practice and Government policy.

Yours sincerely,

A black rectangular redaction box covering the signature of John Evans.

---

John Evans On Behalf of the Forestry Appeals Committee