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28th September 2021.

**Subject:** FAC 056/2021 regarding licence CN86165

Dear [REDACTED]

I refer to an appeal made to the Forestry Appeals Committee (FAC) in relation to this decision by the Minister for Agriculture, Food and the Marine (DAFM). 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**

Licence CN86165 is for the afforestation of 12.19 hectares including 1,322 metres of fencing at Derrindurn, Co. Leitrim which was approved by the Department of Agriculture, Food and the Marine (DAFM) on the 18<sup>th</sup> February 2021 subject to standard conditions and which also included condition no. 5 to adhere to Archaeologist's report as attached.

#### **Hearing**

A hearing of appeal FAC 056/2021 was held by a division of the FAC on the 24<sup>th</sup> August 2021. The FAC members in attendance at the hearing were Mr. Myles Mac Donncadha (Chairperson), Mr. John Evans, Mr. James Conway and Mr Derek Daly.

#### **Decision**

Having regard to the evidence before it, including the record of the decision by the DAFM, the notice of appeal and all submissions received, and, in particular, the following considerations, the FAC has decided to affirm the decision of the Minister regarding licence CN86165.

#### **Licence**

The licence pertains to the afforestation in relation to an area of 12.19 hectares at Derrindurn, Co. Leitrim. The application also provides for 1,322 metres of fencing. Documentation submitted includes site notice, mapping including a fencing map and biomaps. The site is divided into four plots and the species to be planted are Sitka Spruce and ADB based on the licence approval. A 38kV line traverses the site.

Documentation on file refers to the predominant soil type underlying the project area is predominantly podzols in nature. The slope is predominantly flat to moderate. The project area is crossed by / adjoins an aquatic zone(s). The vegetation type(s) within the project area comprises grass/rush. There is a watercourse located to the North West and West of the site. The project lies in the River Sub-Basin River Sub-Basin Diffagher\_010 Waterbody WFD as identified in EPA data the status of which is indicated as good and in terms of risk is indicated as not at risk.

The licence application was not referred to any statutory body but was referred to the DAFM archaeologist who in a response recommended conditions in a grant of approval of the licence. Three submissions were made to the DAFM in the course of the assessment of the licence application including one from the appellant.

The assessment of the licence application by DAFM included a desk and field assessment. In relation to Appropriate Assessment screening six Natura 2000 sites were identified within 15 kilometres, Boleybrack Mountain SAC 002032; Cuilcagh - Anierin Uplands SAC 000584; Lough Arrow SAC 001673; Lough Arrow SPA 004050; Lough Gill SAC 001976 and Unshin River SAC 001898 which were all screened out due to the location of the project area within a separate water body catchment to that containing the Natura site, with no upstream connection, and the subsequent lack of any hydrological connection.

An in-combination report was prepared with a date of the 16th February 2021. Section 1.1.5 indicates a high number of afforestation. Section 2.1 of the Statement indicates that "the project lies in a rural landscape in Derrindurn Co. Leitrim in the River Sub-Basin Diffagher\_010. The River Sub-Basin Diffagher\_010 has approximately 36% forest cover, which is higher than the national average of 11%. At 12.19 hectares the project is considered medium in scale". The Statement concludes that DAFM excludes the likelihood of this project, either individually or in combination with other plans and projects, having a significant effect on the European Site(s) listed above.

## **Appeal**

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

The grounds of appeal refer to;

- The appellant has grave concerns in relation to the way the Forest Inspector and the Forest Service ignored the strong local opposition to this afforestation licence. The further devastating impact this development, in-combination with all other plantations in this area is having on the social and economic sustainability of this community has not been given any consideration.
- The appellant believes an EIA is warranted.
- The appellant questions why this application was not sent to the prescribed bodies for comment, Leitrim County Council, Inland Fisheries, EPA and NPWS.
- The location of the proposed development is within the Zone of Influence of sites designated under European Law. As such and in accordance with Article 6(3) of the EU Habitat's Directive (Council Directive 92/43/EEC) regarding Appropriate Assessment.



- Articles 6(3) and 6(4) of the Habitats Directive sets out the decision-making tests for plans or projects affecting Natura 2000 sites. Article 6(3) establishes the requirement for Appropriate Assessment: "Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the 5 competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the genera] public."
- The EPA should have been contacted in relation to this application as it could have a continued negative impact on Lough Allen a Priority Area for Action under the WFD which was already declared Moderate status by the EPA. This status was declared prior to the landslide at Shass Mountain when tens of thousands of cubic metres of peat was washed into the lake.
- The Water Framework Directive (WFD) (2000/60/EC), which came into force in December 2000, establishes a framework for community action in the field of water policy. The WFD was transposed into Irish law by the European Communities (Water Policy) Regulations 2003 (SI 722 of 2003). The WFD rationalises and updates existing legislation and provides for water management on the basis of River Basin Districts (RBDs). RBDs are essentially administrative areas for coordinated water management and are comprised of multiple river basins (or catchments), with cross-border basins (i.e. those covering the territory of more than one Member State) assigned to an international RBD. The aim of the WFD is to ensure that waters achieve at least good status by 2021 and that status does not deteriorate in any waters.

The DAFM in a statement to the FAC in response to the appeal outlines chronology of the assessment of the licence with the statement from the Department regarding the appeal stating that the decision was issued in accordance with our procedures, S.I. 191/2017 and the 2014 Forestry Act, that the District Inspector carried out a field inspection and desk audit on this application and that all criteria and guidelines were fully adhered to and the approval is in order.

In considering the appeal the FAC noted that the EU EIA Directive sets out in Annex I, a list of projects for which EIA is mandatory and that 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. The Irish Forestry Regulations 2017, in relation to forestry licence applications, require the compliance with the EIA process for applications relating to afforestation which involve 50 hectares or more and 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 proposal is for the afforestation of 12.19 hectares which is substantially sub threshold for mandatory EIA as set in Irish Regulations. The DAFM recorded a consideration of the proposal across a series of criteria including the Project Description, Existing Land Use, Cumulative effect and extent of project, Soil, Water and Landscape. The DAFM also recorded a separate Appropriate Assessment and recorded information provided by the Applicant in relation to the

scale, nature 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 EIA.

In considering the appeal the FAC examined the Appropriate Assessment Screening undertaken by the DAFM as it related to the afforestation of 12.19 hectares. Having examined the documentation submitted the FAC noted and identified the same six Natura sites within a 15 kilometre radius. The FAC considered the nature, scale and location of the proposal, the European sites identified, and their conservation objectives and the reasons provided by the DAFM for screening them out. The DAFM considered each site in turn and provided the reasons for screening all the sites out for Appropriate Assessment. Details of other plans and projects were also examined. The proposed works are located outside of any European site and there is no evidence of a pathway of effects to a European site. Neither is there evidence of protected habitats or species on the site. The FAC is satisfied, having regard to the record of the decision, that no error was made in the decision regarding Appropriate Assessment screening.

In relation to other matters, it is noted that that the project was not referred to statutory bodies and this is referred to in the grounds of appeal. The FAC considers that the Minister and their Authorised Officers are the competent authority for afforestation licences in Ireland. Regulation 9 of the Forestry Regulations 2017 refers to notice to consultation body and the provisions in relation to referring licences and that where it is appropriate information is provided in notices made to consultation bodies. In this instance the FAC considers that the DAFM has not erred in relation to referral to statutory bodies and that specifically in relation to Natura 2000 sites all sites within a 15 kilometre radius of the project were screened out due to the location of the project area within a separate water body catchment to that containing the Natura site, with no upstream connection, and the subsequent lack of any hydrological connection.

The grounds of appeal refer to the risk of landslide referencing a landslide at Shass Mountain. Having examined Geological Survey of Ireland (GSI) data in relation to landslide susceptibility the area in which the project is located is identified as of low susceptibility and there is no evidence given the topography and slope profiles to identify a risk.

In relation to potential hydrological impacts on Natura 2000 sites and on water quality generally it is noted that this project lies in the River Sub-Basin River Sub-Basin Diffagher\_010 Waterbody WFD as identified in EPA data the status of which is indicated as good and in terms of risk is indicated as not at risk. The FAC note that the issue of potential effects and impacts on aquatic zones and watercourses and has examined this issue and from an assessment of the topography of the site and the pattern of contours and slopes, mapping and aerial imagery of the area subject to the application of the



requirements of condition 5 of the licence which provides for adherence to forestry and water quality guidelines and that guidelines apply the FAC is satisfied that the project will not impact on water quality.

In relation to the Inspector's Certification and the FAC notes references to S/A in the certification for questions to 11, 18 and 19. A definitive response in particular to question 11 would be appropriate in particular as there were a number of submissions and the level of forestry is referred to in the grounds of appeal but it does not constitute a significant error considering the overall processing and assessment of the proposal including the fact that an Appropriate Assessment was undertaken and the nature, scale and location of the proposal in combination with other projects.

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 CN86165 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,

A black rectangular redaction box covering the signature of Derek Daly.

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Derek Daly On Behalf of the Forestry Appeals Committee