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26 October 2021

Subject: Appeals FAC105/2021 & FAC111/2021 regarding Licence CN86966

Dear [REDACTED]

I refer to the appeals 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 14A (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

Licence CN86966 for afforestation of 15.75 hectares in Faughary, Co. Leitrim was approved by the Department of Agriculture, Food and the Marine (DAFM) on 31 May 2021.

### Hearing

A non-oral hearing of appeals FAC105/2021 and FAC111/2021 of which all parties were notified, was held by a division of the FAC on 14 October 2021.

### In attendance

FAC Members: Des Johnson (Chairperson), Seamus Neely and Luke Sweetman  
Secretary to the FAC: Michael Ryan

### Decision

The Forestry Appeals Committee (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 this licence (Reference CN 86966).

The proposal is for the afforestation of a stated site area of 15.75ha at Faughary, Co. Leitrim. Fencing of 1700m would be provided. The project lands are in two plots. Plot 1 (5.47ha) would be planted with Common Alder, Birch, Sessile Oak, and additional Broadleaves. Plot 2 (10.28ha) would be planted with Sitka Spruce (95%) and additional Broadleaves (5%).

The project lands are in a remote rural and scenic area. There is existing mature forestry adjoining and substantial forest cover in the wider area. The site adjoins a local road with narrow carriageway, and is at a point where there are sharp bends and sightlines are poor. There is a windfarm on the opposite side of the local road.

The DAFM referred the application to An Taisce and Leitrim County Council. An Taisce responded stating that the proposed development is upstream of Lough Gill. Main concerns are as follows:

1. The proposed development (15ha) is immediately adjacent to a plot of approximately 30ha of established forestry, and there is considerably more established forestry in the general vicinity. Cumulative impacts must be considered with regard to existing or approved projects. The combined area of the proposed plot and existing forestry would reach more than 100ha and should require sub-threshold EIA. The screening determination by the competent authority should have regard to the Precautionary Principle
2. The release of nutrients during and following forestry operations is a particular problem in peat soils, as in this case. It should be ensured that any afforestation does not negatively impact on the Owenmore (Manorhamilton)\_020 waterbody, which is of 'good' status
3. The site is in an area designated as High Visual Amenity under the Leitrim CDP 2015-2011. Such areas are environmentally sensitive and need protection. The planting of Norse Evergreens has the potential to lead to increased acidity levels in watercourses, a loss of biodiversity, and adverse impacts on the landscape. This area is deemed to have a low capacity to accommodate forestry.

Leitrim County Council response can be summarised as follows:

1. The lands are located within an area of Low Capacity and High Sensitivity. The nearest Natura site is Lough Gill SAC, approximately 13km south of the project lands
2. The proposed development accesses on to the L-61802-0. There are inadequate sightlines. There would not be enough room to construct the standard forest road bellmouth. The application should be refused.
3. The proposed development should not be approved until development consent has been granted for the material widening of the existing access on to the public road
4. Leitrim County Council objects to the afforestation of these lands

The Inspector's certification states that the proposed development was field and desk assessed. The site is not prone to flooding, is free of shell marl and highly calcareous soils, is not sensitive to fisheries, and is not within a NHA, pNHA, SAC, SPA or National Park. The lands are within a referral zone for NPWS and are within 3km upstream of a NHA, pNHA, SAC, SPA or National Park. They are not within a Freshwater Pearl Mussel catchment and there are no archaeological sites or features. This is a Prime Scenic Area as designated in the Leitrim County Development Plan, but there are no other High Amenity Landscape considerations. Soils are predominantly podzols and the slope is predominantly flat to moderate. The site is crossed by/adjoins an aquatic zone. Mounding and angle notch planting are proposed. No drainage is



required and road access is provided. A firebreak would be required. Manual weed control is proposed in years 1 and 2, and 250kg/ha of Granulated Rock Phosphate would be applied in year 0, and it is not likely that more than one application would be required. Seven Natura 2000 sites are identified within a 15km radius of the site and these are all screened out for Stage 2 assessment with reasons given. The approximate percentage forest cover in the townland is stated to be 0%, the approximate percentage forest cover within 5km is 21.82%, and the approximate percentage forest cover in the underlying waterbody is 20.29%. This is not in an area of high nutrient sensitivity, there would be no impact on any Way-Marked Way, no impact on a densely populated area, and the site is not in an area commonly used by the public for recreation.

A Natura Impact Statement (NIS), dated 18.07.2020 and produced by a Consultant Ecologist, was submitted to the DAFM. This describes the site as enclosed, exposed and sloping at 210-270m on agricultural lands comprising wet grassland over peats and peaty gleys. The site has a few small upland eroding tributaries to the Owenmore River. A small derelict building exists on the site. There are small neglected drainage ditches and earth banks throughout the site. The NIS identifies 7 Natura 2000 sites within 15km radius of the site. Three sites are screened in for Stage 2 assessment - Lough Gill SAC, Glenade Lough SAC, and Sligo/Leitrim Uplands SPA. Screened out for Stage 2 assessment are Arroo Mountains SAC, Lough Melvin SAC, Boleybrack Mountain SAC, and Ben Bulbin, Gleniff and Glenade Complex SAC. Reference is also made to Thor Mountain NHA, which is located a short distance to the east of the site with peatlands of conservation interest. Stage 2 assessment is carried out for the Lough Gill SAC, Glenade Lough SAC and Sligo/Leitrim Uplands SPA. Qualifying interests and conservation objectives for each site are listed, and the potential for adverse effects on each qualifying interest examined. Mitigations are recommended, where deemed necessary under the headings of silt and sediment control, loss of chemicals/hydrocarbon to the environment, biosecurity measures, and post-operation works. The NIS concludes that, with the proposed mitigations applied, there is no possibility of the project individually having an adverse effect on the integrity of the associated Natura sites. In-combination effects are based on a search dated 15.07.2020. It is recorded that there are no relevant planning applications of concern in the townland but a wastewater discharge is listed. The site is located within Water Framework Directive (WFD) Groundwater body IE\_WE\_0055 Killarga, with 'good' status, and WFD River waterbody IE\_WE\_Owenmore Manorhamilton with 'good' status. The NIS concludes that, as the project is outside a Natura site, and following research into the potential in-combination impacts of the project site, and utilising the proposed mitigations provided, no effects on any of the qualifying interests has been identified. The development, therefore, cannot contribute to any cumulative effect on any European Natura sites.

A document titled 'Appropriate Assessment Screening Determination', dated 22.01.2021 and produced by a Project Ecologist on behalf of DAFM, states that Plot 1 soils are predominantly deep poorly drained mineral soils. Plot 2 are similar but to the east of the plot there is a band of blanket peat. The elevation is 210m – 270m. The slope is moderate with south westerly and westerly aspects. There is a fluvial flood risk in Plot 1 tracking the River Skreeny from the northern to southern boundary. The width of the flood hazard varies from 20m – 80m, with average width of 35m. The Skreeny River flows through Plot 1, entering through the northern

boundary and flowing through the southern boundary. The Saddle Hill Stream enters the project area from the western boundary of Plot 1 where it joins the Skreeny. The Skreeny flows south for 2.5km where it joins the Owenmore (Manorhamilton) and Lough Gill SAC. The Owenmore flows west for 3.5km where it becomes the Benet. The Benet flows south-west for c.20km where it flows into Lough Gill. This determination screens out 6 sites for Stage 2 assessment, giving reasons, and screens in Lough Gill SAC for Stage 2 assessment.

An Appropriate Assessment Determination (AAD), prepared by a Project Ecologist, Fehily Timoney & Co., is dated 21.01.2021. This contains Appropriate Assessment Screening for 7 Natura 2000 sites identified within a 15km radius of the project lands. The following sites are screened out with reasons given - Arroo Mountain SAC, Lough Melvin SAC, Boleybrack Mountain SAC, Glenade Lough SAC, Ben Bulbin, Gleniff and Glenade Complex SAC, and Sligo/Leitrim Uplands SPA. The listed sites are screened out for reason of location of the project area within a separate waterbody catchment with no upstream connection, and lack of hydrological connectivity. Application of current Annex I Habitats Table (18.12.2019) which indicates screen out scenarios in relation to habitats listed as Qualifying Interests for this European site – in the case of all of the SAC sites, and application of the current Bird Foraging Table (06.01.2020) which indicates screen out scenarios in relation to species listed as Special Conservation Interests for the Sligo/Leitrim Uplands SPA. Screened in for Stage 2 assessment is Lough Gill SAC for reason of direct hydrological connection of 3.5km. The AAD evaluated the submitted NIS. This was compiled by a qualified ecologist. The NIS contains a fair and reasonable examination and analysis of the likely significant effects of the activity on the environment, in particular Lough Gill SAC, and adequately identifies, describes and assesses those effects, except in relation to the Glenade Lough SAC and Sligo/Leitrim Uplands SPA, which are screened in despite the absence of downstream hydrological connection and despite the project area being outside the core foraging range of the Special Conservation Interests for which Sligo/Leitrim Uplands SPA is designated. The AAD concludes that, based on best scientific knowledge, the proposed development, individually or in combination with other plans or projects, will not adversely affect the preservation of the site at favourable conservation status, if carried out in accordance with specific mitigation measures prescribed. These are in summary:

- Water setback of 20m to be applied in Plot 1
- No disturbance within the 20m wide water setback
- 10 rows of additional broadleaves to be pit-planted at the edge of the water setbacks
- 5m wide water setback to relevant watercourses and hotspots
- Silt traps to be installed every 50m within existing field drains on site. To be installed before works commence and to be monitored and maintained throughout operations. All drains to terminate in a silt trap outside the water setback
- Retention of hedgerows and mature broadleaves
- Operations to cease during heavy rainfall
- Any temporary crossing of a relevant watercourse to be crossed using free-standing structure



- Fertiliser application requirements
- Requirements for all users of pesticide products
- No use of herbicides within 20m of an aquatic zone or relevant watercourse
- Requirement for pollution control measures
- No removal or disturbance of areas of wet woodland, carr and thick scrub within 50m of an aquatic zone or within 20m of a relevant watercourse
- No cleaning of existing watercourses within 50m of an aquatic zone
- Cleaning of all machinery/gear used in and around drains before and after site works
- Adherence to Environmental Requirements for Afforestation (DAFM 2016), and Forestry Standards Manual (DAFM 2015).

An In-combination report was compiled on 07.05.2021. This lists non-forestry projects as dwellings, and urban wastewater. Forestry projects listed are afforestation (1), private felling (1) and Coillte felling (27). (Note: the In-combination assessment as part of the Appropriate Assessment Screening Determination is quite different from the format of the DAFM assessment. It lists non-forestry projects as including wastewater storm storage tank, office extension, domestic extensions, dwellings, community hall, car parking, and forest road entrance, and forestry related projects as afforestation (2), private felling (1), Coillte felling (7). It also states that the project lands lie in the River Sub-basin Owenmore (Manorhamilton)\_020. This has approximately 34% forest cover).

The licence issued on 31.05.2021. It is subject to standard conditions plus additional conditions relating to:

- Consult with Leitrim County Council prior to commencement with regard to usage of public roads
- Adhere to Environmental Requirements for Afforestation and Forestry Standards Manual
- Adhere to mitigation measures set out in the AAD

There are two appeals against the decision to grant the licence. The first appeal contends that the proposed development conflicts with Leitrim County Development Plan (CDP). This is an area of Low Capacity and High Sensitivity for further afforestation. Conifer plantations lead to increased acidity levels in watercourses and negative impacts on habitats with loss of biodiversity. This is a High Visual Amenity Area. The cumulative impact of afforestation in this area has not been taken into account. This is an add-on to a very large single block of Sitka spruce of over 350ha. The cumulative impact is having a negative impact on the feeding grounds of many EU protected species of birds, including Peregrine Falcon and Hen Harrier. Continuous afforestation of this region over past decades has been detrimental to the local community with nobody any longer living in Faughary, a townland of 468ha. Negative social, economic and environmental impacts warranted an EIA but this was not carried out. The Bio Map does not conform with 5(2) of the Forestry Regulations as all hedgerows are not clearly marked. There is local concern regarding to extent of conifer forestry in the area. The AAD does not transcribe the mitigations of the NIS in respect of the monitoring of drains and silt traps until greened up. The mitigations in the AAD are less stringent. There is no reference to

a setback distance in the AAD and no distinction between pesticide use in conifers and broadleaves. There is no site-specific Met Eireann forecast for this site. It is not clear how the mitigation in the AAD relating to the cessation of operations during periods of heavy rainfall would apply in practice. The In-combination report in the NIS is not consistent with the in-combination report by DAFM. The Inspector's certification is incorrect in stating that there are not any other High Amenity considerations. Answers to Q5 and Q6 in the certification are wrong and the correct figure is closer to 50%. The Inspector's determination was based on erroneous data. There is no evidence of ecological input into aspects of the project raised in submissions, especially the Hen Harrier. There is a NHA within 700m. A Visual Impact Assessment should have been requested.

The second appeal contends that this site has low capacity for absorbing afforestation, as identified in the CDP. The access shown is inadequate and dangerous to all road users. The Appropriate Assessment screening does not assess other plans and projects in combination with the proposed development. The screening is inadequate. A large proportion of the site has deep peat. This type of planting will damage peat, cause landslides and peat into watercourses. This site is a Hen Harrier nesting site.

In response, the DAFM recommends that the decision to grant the licence be remitted for reason that a significant error was identified after the decision was made in relation to some of the EIA outputs on iFORIS. The percentage forest cover in the townland was stated to be 0%. This is factually incorrect as the figure is, in fact, 51.12%. The error invalidates the EIA. The project is at a separation from the nearest SPA designated for the Peregrine Falcon (the Sligo Leitrim Uplands SPA) that no impacts are expected being outside the core foraging area for the species. The project lands do not lie anywhere near an SPA designated for Hen Harrier. The mitigations in the AAD can be corrected in a revised AAD to mirror those in the NIS, if required. The control of operations during periods of heavy rainfall can be achieved through adherence to a revised condition. The in-combination assessment in the NIS was supplemented using DAFM's internal system.

A hearing of the appeals was convened on 14 October 2021. In the first instance the FAC addressed the procedures followed, and conclusions reached, in respect of the requirements of the Habitats Directive before the decision was made to grant the licence. The FAC noted that 7 Natura 2000 sites were identified within a 15km radius of the project site, and found this to be correct and that there was no reason why the radius should be expanded in this case. A Natura Impact Statement, prepared by a Consultant Ecologist, and dated 18.07.2020, was submitted and formed the basis for the DAFM Appropriate Assessment screening and AAD. The NIS screened out 4 Natura sites and screened in three sites for Stage 2 assessment. An Appropriate Assessment Screening Determination, prepared by a Project Ecologist and dated 22.01.2021 screened out Arroo Mountains SAC, Lough Melvin SAC, Boleybrack Mountain SAC, Glenade Lough SAC, Ben Bulbin, Gleniff and Glenade Complex SAC and Sligo Leitrim SPA, giving reasons, and screened in Lough Gill SAC for Stage 2 assessment. An AAD, dated 21.01.2021 and prepared by a Project Ecologist, screens out 6 of the Natura 2000 sites, and screens in Lough Gill SAC for Stage 2 assessment, giving reasons for this conclusion. The AAD, while considering the submitted NIS as a fair and reasonable examination and analysis



of the likely significant effects of the activity on the environment, in particular Lough Gill SAC, gives reasons for screening out Glenade Lough SAC and the Sligo/Leitrim Uplands SPA for Stage 2 assessment. In-combination effects considered were based on the information contained in the NIS as supplemented using the DAFM's internal system as reflected in an in-combination report dated 07.05.2021. While noting apparent differences in the various in-combination listings on the file, the FAC noted that these were prepared at different times, and that report dated 07.05.2021 lists considerably more forestry related projects. The FAC also noted that the Appropriate Assessment Screening Determination pre-dated the AAD (by one day), but considered this was possibly a clerical error and not of particular significance. The AAD recommends specific mitigation measures to be included as conditions of a licence, if granted. The FAC noted that it is a condition of the licence granted that the mitigation measures, as set out in the AAD, be adhered to. Based on the information before it, the FAC finds no reason to conclude that there was any significant or serious error made in the making of the decision to grant the licence in respect of this issue.


The FAC considered the procedures followed, and the screening determination reached, in respect of EIA. This screening determination is based on an assumption of a zero percent forest cover in the townland, whereas the correct figure is 51.12%. This is a serious error and is recognised in the DAFM response to the grounds of appeal. The DAFM recommend that the decision to grant the licence should be set aside and remitted for this reason. The FAC noted that this is a scenic area, designated as being an area of Low Capacity and High Sensitivity in the statutory Leitrim County Development Plan, and that there is very significant existing forest cover in the area. The FAC is not satisfied, based on the information before it, that these factors were adequately considered and assessed in the making of the EIA screening determination, and that this constituted a serious error.

It is contended in grounds of appeal that the Bio Map does not show existing hedgerows on the site. The FAC considered that this could be addressed by way of a licence condition. The FAC noted that this site is not designated for bird species, including Peregrine Falcon and Hen Harrier, and that the only Natura 2000 site within a 15km radius with either species listed as a qualifying interest is the Sligo/Leitrim Uplands SPA (which lists Peregrine Falcon and Chough) and this is at a separation distance of approximately 9500m from the project lands. The appellants contend that there is no satisfactory access to the site and the County Council also contend that there are inadequate sightlines available and that the application should be refused. The FAC noted that the project lands have a short frontage on to the adjoining road and that this is at a point where the vertical and horizontal alignment of the road are substandard. However, the FAC further noted that this is a local road which appears to carry little traffic, and considered that, subject to a condition requiring the submission and agreement of a traffic management plan for forestry operations relating to the subject site, satisfactory access during forestry operations could be provided, subject to consent.

The FAC concluded that there were serious errors made in the screening determination for EIA, which was made in advance of, and informed the decision to grant the licence. The screening determination was based on incorrect information relating to forest cover. Furthermore, the FAC is not satisfied that adequate consideration was given to the Leitrim

County Development Plan designation for this area as Low Capacity and High Sensitivity, having regard to the extent of existing forest cover in the area. In deciding to set aside and remit the decision of the Minister, the FAC concluded that a new screening determination in respect of the requirement for EIA should be undertaken, informed by the correct percentage of forest cover in the townland, and adequate consideration of the designation of this area as being of Low Capacity and High Sensitivity in the Leitrim County Development Plan, and the extent of existing forest cover in the area, before a new decision is made in respect of the proposed development.

Yours sincerely

A large black rectangular redaction box covering the signature of Des Johnson.

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Des Johnson on behalf of the Forestry Appeals Committee