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10th September 2021

Subject: Appeals FAC 077/2021, 078/2021 & 079/2021 regarding licence CN83086

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 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 Hearing

Licence CN83086 for afforestation of 21.54 ha at Mullaun, Co. Leitrim, was approved by the Department of Agriculture, Food and the Marine (DAFM) on 24th March 2021. A hearing of appeals FAC 077/2021, 078/2021 and 079/2021 was held by a division of the FAC on 1st September 2021. The FAC members in attendance at the hearing were Mr. John Evans (Deputy Chairperson), Mr. Vincent Upton, Mr. Iain Douglas, and Mr. Seamus Neely.

Secretary to the FAC: Mr. Michael Ryan

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 CN83086.

The licence decision in this case pertains to the afforestation of lands on a stated site area of 21.54 ha at Mullaun, Co. Leitrim. The proposed species are Sitka spruce (90%) and Broadleaves (10%). The land is described in the Appropriate Assessment screening documentation (contained in the Inspector's Certification on file) as having a slope which is predominantly flat to moderate (<15%) and that the project area is crossed by / adjoins an aquatic zone(s). The Appropriate Assessment Determination report describes plot 1 as being predominantly underlain by surface water gleys and ground water gleys, and having deep poorly drained mineral derived from mainly non-calcareous parent materials with a small section of mineral alluvium in the southwest either side of the watercourse. Plot 2 is described as having a majority of the plot underlain by surface water gleys and ground water gleys, having deep poorly drained

mineral derived from mainly non-calcareous parent materials and that there is a section of basin peats and blanket peats(some), described as cutaway / cutover peat, at the south-eastern end of the plot (ca.10% of the area of Plot 2). It also states that in the north-central area of Plot 2 there is a block of peaty gleys, described as poorly drained mineral soils derived from mainly non-calcareous parent materials (ca. 10% of the plot area). The project is in the CORNAVANNIGE_010 Sub Basin and the waterbody has a good status assigned to it in the 2013-18 Water Framework Directive assessment period.

The project was referred to Leitrim Co. Council, An Taisce and the National Parks and Wildlife Service (NPWS). There is no response from An Taisce on file. The response from the NPWS noted that the Department of Culture, Heritage and the Gaeltacht had no comments to make on the application and included an appendix containing some general points. The response from the County Council set out some detail from the County Development Plan relating to the project area, raised an objection to the proposed planting of the lands within low-capacity forestry designation, and provided conditions that should be adhered to should the proposed works proceed. The Inspector's Certification noted that the application was desk and field (20/03/2021) assessed, that the site is not acid sensitive, it is not within a Fresh Water Pearl Mussel (FWPM) zone or catchment, is not sensitive to fisheries, is not within a hen harrier zone, and that there are no archaeological sites or features on the project lands. Drainage is not required, and road access is provided. There is said to be approximately 33.27% forest cover within 5kms, no forestry within the same townland, no impact on any Way-Marked Way, no impact on any densely populated area, and the area is not commonly used by the general public for recreation. The record also contains additional information requests made by the DAFM in relation to the productivity of the site and a request to undertake a survey and analysis in line with the Land Types for Afforestation document. The Applicant provided these results for a number of identified sampling points on the site listing the identified plant species and related R + N score. The DAFM also requested the exclusion of the eastern section of the site based on poor productivity potential and the concerns expressed by the County Council in relation to the sensitivity of parts of the land. The Applicant submitted amended maps and details.

Appropriate Assessment

The DAFM carried out an Appropriate Assessment Screening and identified nine sites (Aroo Mountain SAC 001403, Ben Bulbin, Gleniff And Glenade Complex SAC 000623, Boleybrack Mountain SAC 002032, Corratirrim SAC 000979, Cuilcagh - Anierin Uplands SAC 000584, Glenade Lough SAC 001919, Lough Gill SAC 001976, Lough Melvin SAC 000428 and Sligo/Leitrim Uplands SPA 004187) within 15km of the proposal. This screening assessment is set out in a report dated 5th March 2021 and marks the conclusion reached for each site examined as 'Screen Hold'. An Appropriate Assessment Determination report prepared by a Project Ecologist, of Fehily Timoney & Company on behalf of the Department of Agriculture, Food & the Marine and dated 16th March 2021 is to be found on file. It considers the same nine sites as the DAFM Appropriate Assessment Screening and screens out all nine sites. The reasons for the screening conclusions reached for each site are set out in the report. An In-Combination report dated 16th March 2021 is to be found on file and is appended to the Appropriate Assessment Screening Determination report of the same date. It sets out that in relation to CN83086, the DAFM deems that there is no potential for the project to contribute to any effects on the same nine European sites, when considered in-

combination with other plans and projects. It also states that it is considered that the regulatory systems in place for the approval, operations (including any permitted emissions) and monitoring of the effects of the other plans and projects are such that they will ensure they too do not cause environmental pollution or give rise to direct or indirect effects on the integrity of any European sites in view of those sites' conservation objectives.

The Appeals

There are three third party appeals against the decision to approve the licence. The full grounds of appeal in the case of the three appeals submitted (including any related correspondence) is to be found on file and has been considered by the FAC.

The appeal in the case of FAC 077/2021 submits grounds that include reference to the appellant's original submission on the proposal, reference to the location of the appellant's new house as being within 500m of proposal and submits impacts for it from the proposal, contends that there is already a lot of forestry within view of house, submits that the proposal will close in more of the mountain that can be viewed from the house, submits overshadowing of lands that the appellant farms surrounding the proposal, and submits that the proposal will lead to devaluation of their dwelling house and farm. The appeal includes a document addressing points on Farming, Environment, the road to the proposal, the Dwelling House, and Community / Tourism. There is post appeal correspondence from the appellant in the case of FAC 077/2021 and this was also considered by the FAC.

The appeal in the case of FAC 078/2021 submits grounds that include a contention that site notice was not revised to show the planned project area, mentions being resident at the location for over 35 years, references considerable investment in the appellant's home to accommodate tourists, contends that Leitrim already has its fair share of forestry, submits that hill walking, cycling, fishing and tourism is under threat by the surge of afforestation, and submits a lasting impact on business and community. The appeal includes a document which goes into more detail including in relation to the above.

The appeal in the case of FAC 079/2021 submits grounds that include a submission that the area of licence has changed, that site is waterlogged and prone to flooding, references a National Heritage Area, references the provisions of the Leitrim County Development Plan (Low Capacity for forestry) as it applies to the project, submits that there was no site visit by the Ecologist, contends that there was no site visit by an Inspector and submits that requirement for 15% broadleaf has not been met. The appeal includes a document which goes into more detail on the above including in relation to the above.

DAFM Statement to the FAC

The DAFM provided a statement to the FAC in respect of each of the three appeals. Each statement sets out that the decision was issued in accordance with DAFM procedures, SI 191/2017 and the 2014 Forestry Act. The statements also set out the dates regarding the processing of the application, referrals, the dates of field inspections, the number of submissions received and a summary reference regarding Appropriate

Assessment. The statement relating to FAC 077/2021 included commentary from the Ecologist that the site was not visited by the Ecologist in accordance with current procedures, that the project area lies wholly outside a SPA and hen harrier "red zone" and commentary in relation to a watercourse on site. The statement relating to FAC 078/2021 included commentary from the Ecologist regarding the use of information in the application, ortho photography and the DAFM *iforis* system in the processing of the application. The commentary also referenced the use of the OPW Flood Hazard layers on the DAFM *iforis* system and that same does not show the site to lie within a flood hazard area. The statement relating to FAC 079/2021 included commentary from the Ecologist regarding the contentions relating to site visit, that the in-combination assessment is correct apart from an error whereby an incorrect listing of Natura Sites was included at Section 2.10 of the assessment. The statement includes a note that this error does not affect the outcome of the Appropriate Assessment Determination in this case.

Consideration by the FAC

The FAC held a hearing of the appeals on 1st September 2021. The Committee considered, in the first instance, if the procedures leading to the making of the decision to grant the licence for the proposed development were consistent with the EIA and Habitats Directives. Regarding Environmental Impact Assessment (EIA) and related matters, the EU EIA 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. The Irish Regulations, in relation to forestry licence applications, require mandatory EIA 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 proposal as described is for the afforestation of 21.54 ha and is sub-threshold for the mandatory submission of an EIA report. The FAC found that the DAFM assessed the proposal and considered the application across a range of criteria, including water, designated areas, landscape and cumulative effects, and determined that the project was not required to undergo the EIA process.

Regarding Appropriate Assessment and related matters, the FAC finds the DAFM carried out an Appropriate Assessment Screening and identified nine Natura 2000 sites (Aroo Mountain SAC 001403, Ben Bulbin, Gleniff And Glenade Complex SAC 000623, Boleybrack Mountain SAC 002032, Corratirrim SAC 000979, Cuilcagh - Anierin Uplands SAC 000584, Glenade Lough SAC 001919, Lough Gill SAC 001976, Lough Melvin SAC 000428 and Sligo/Leitrim Uplands SPA 004187) within 15km of the proposal as set out in a report dated 5th March 2021 and marks (in this report) the conclusion reached for each site examined as 'Screen Hold'. The FAC also finds that an Appropriate Assessment Determination report prepared by an Ecologist, of Fehily Timoney & Company, on behalf of the Department of Agriculture, Food & the Marine and dated 16th March 2021 is to be found on file which considers the same nine sites as the DAFM Appropriate Assessment Screening and screens out all nine sites. The reasons for the screening conclusions reached for each site are set out in the report. The FAC finds that an In-Combination report dated 16th March 2021 is to be found on file and is appended to the Appropriate Assessment Screening

Determination report of the same date. It sets out that in relation to CN83086, the DAFM deems that there is no potential for the project to contribute to any effects on the same nine European sites, when considered in-combination with other plans and projects. The FAC noted the content of the statement relating to FAC 079/2021 wherein it sets out that an incorrect listing of Natura 2000 sites was included at Section 2.10 of the assessment and that this error does not affect the outcome of the Appropriate Assessment Determination in this case. In considering this matter the FAC concluded that this is a clerical error which is minor in nature and agrees that it does not affect the outcome of the Appropriate Assessment process relating to this proposal.

The FAC examined publicly available information from the NPWS and EPA and identified the same nine Natura 2000 sites. 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, to determine the likely significant effects of the proposal itself or in combination with other plans and projects on a European site. The FAC considered that the procedures adopted by the DAFM in their assessment are considered acceptable. Based on the information available to it, the FAC is not satisfied that a serious or significant error or series of errors were made in the making of the decision regarding Appropriate Assessment in this case and concurs with the conclusions reached.

Regarding contentions raised relating to the environment / water quality and the potential for flooding, the FAC reviewed the grounds submitted in the appeal. The FAC finds that the proposal area is separated into two pieces by a public road and is on a site that is described in the Appropriate Assessment screening documentation (contained in the Inspector's Certification on file) as having a slope which is predominantly flat to moderate (<15%) and that the project area is crossed by / adjoins an aquatic zone(s). The publicly available EPA maps confirm the proposal area is in the CORNAVANNIGE_010 Sub Basin and the waterbody has a good status assigned to it in the 2013-18 Water Framework Directive assessment period and is recorded as not at risk. The FAC notes that setbacks of 10m are proposed along aquatic zones in both Plots 1 and 2 and that no drainage is required. The Appropriate Assessment Screening Determination report sets out that the proposal will have no impacts on Natura 2000 sites. The matter of flooding is also addressed by the DAFM in its processing of the application and as set out in its statements to the FAC. The FAC consulted flood risk assessment mapping on the OPW public website and concluded that the information contained corresponded with the DAFM findings as it relates to flooding risks in this case. Having regard to the record of the decision, the submitted grounds of appeal, the nature, scale and location of the proposal and the conditions under which the project is to be carried out, the FAC is not satisfied that the proposal would result in any likelihood of significant effects on the environment or on water quality.

In relation to the potential impacts on the appellants dwelling houses, impacts on business, tourism, community and related matters arising from the proposal the FAC noted that the location of the dwelling houses referred to in the appeal grounds are significantly beyond the minimum setback distances relating to dwelling houses that are normally applied in the case of afforestation licence approvals, that 10m setbacks are proposed along the public roads and that the file evidences that all the submissions made during the application process were considered by the DAFM in the making of the decision. It appeared

to the FAC that the portion of the proposal that the County Council had objected to had been removed from the final licence on the basis of poor productivity and landscape. The lands in question are described as enclosed agricultural land. In these circumstances, the FAC concluded that there was no convincing evidence before it that a significant or serious error was made in the making of the decision by the Minister to grant the licence for the proposed development as it relates to these grounds of appeal including in relation to potential impact on dwellings. The FAC considered the submissions in the grounds of appeal relating to hen harrier and the reference to Natural Heritage Area. The FAC finds that the project area is not within a hen harrier red zone or proximate to a Special Protection Area and is not within a designated Natural Heritage Area. In these circumstances, the FAC concluded that there was no significant or serious error made in the making of the decision by the Minister to grant the licence for the proposed development as it relates to these grounds of appeal.

The FAC considered the submission in the appeal grounds that a 15% broadleaf component had not been met in the approval of the licence in this case and the grounds raised regarding the public notice. The FAC finds that the original application included the planting of four plots with a mixture of 85% Sitka spruce and 15% broadleaves and that the public notice as displayed on the site is reflective of this. The FAC also finds that the DAFM requested an amendment of the application on 15/07/2019 to exclude the eastern portion of the lands above 200 metres on the basis of insufficient productivity and the response from the County Council that objected to this portion of the proposal, in line with its County Development Plan. The approval that was issued is for an area of 21.54 ha across two plots. In so far as the area approved is wholly within the area originally applied for and that amendments to the application are addressing matters raised in third party / consultee submissions and do not significantly change the nature of the proposal, the FAC is not satisfied that the DAFM has erred in its processing of the application in so far as it relates to public notice requirements.

The FAC finds that the species mix stated in Appendix A of the approval, adherence with which is a condition on the licence, states a broadleaf area of 10%. This reflects the revised species map submitted by the Applicant following the request from the DAFM but no reasons have been provided for this change. The licence also requires adherence with the Forestry Standards Manual (2015) page 15 of which has been amended under DAFM Circular 2/2018 to require a minimum 15% broadleaf component in new plantations. This area can be comprised of separate broadleaf plots, at least 10% in grant and premium category 3 plots and/or additional planting. This change was stated to be to help to achieve the 30% annual broadleaf planting under the Forestry Programme 2014-2020. A 30% annual broadleaf target has been reflected in a number of Government policy and related documentation as described in Forests, Products and People - Ireland's Forest Policy - a renewed vision (2014) in the context of enhancing the biodiversity and landscape benefits of afforestation. While the remit of the Forestry Appeals Committee does not extend to matters related to grant aid, the Forestry Standards Manual (2015) states that it will be employed in the processing of both licence and grant-aid applications and the goal to increase broadleaf planting has been stated in a number of policy related documents. In addition, decisions made under the Forestry Regulations 2017 (SI 191 of 2017) must have regard to any guidelines, codes of practice and standard for good forest practice. In that context, the Forestry Appeals Committee is satisfied that the inclusion of a 10% broadleaf component rather than 15% in the approval represents a serious error.

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 CN83086 in line with Article 14B of the Agricultural Appeals Act 2001, as amended, such that the broadleaf component of the proposal is increased to 15% of the total planted area. In varying the decision, the FAC considered that the proposal would be in keeping with Good Forestry Practice and Government policy.

Yours sincerely,


On Behalf of the Forestry Appeals Committee

