



Art Generation Ltd

16 July 2026

Subject: Appeal **FAC 069/2024** regarding licence decision **CN92096**

Dear Sir/Madam,

I refer to the appeal to the Forestry Appeals Committee (FAC) in relation to the above licence granted by the Minister for Agriculture, Food and Marine (The Minister). The Agriculture Appeals Act 2001, as amended, and the Forestry Appeals Committee Regulations 2020 provide the statutory basis for the functioning and operation of the FAC.

Introduction.

The Forestry Appeals Committee (FAC) established in accordance with Section 14A (1) of the Agriculture Appeals Act 2001 (as amended) has now completed an examination of the facts and evidence provided by the parties to this appeal (FAC 069/2024 – Licence CN92096) and this is its Determination on this appeal.

This appeal is a second appeal in respect of a decision of the Minister for Agriculture Food and Marine (the Minister) on an application for Licence No CN92096. For the avoidance of doubt, the FAC's determination relates to the decision issued by the Minister on the 1st July 2024.

Determination.

Having regard to the facts and evidence before it, including the Department of Agriculture, Food, and the Marine (DAFM) record of the decision, the Statements of Fact (SoF) provided by the DAFM, all materials on file, the notice and grounds of appeal in respect of the original appeal and this second appeal and in particular the following considerations, the FAC has decided to set aside and remit the decision of the Minister regarding licence CN92096.

Forestry Appeals Committee.

A sitting of the FAC was held remotely on the 3rd February 2026 which heard the second appeal (FAC 069/2024) against the second decision to issue the licence on the 1st of July 2025. The FAC members present were: Mr. Edmund Carroll (Chairperson), Mr. Luke Sweetman and Mr. Derek Daly. Secretary to the FAC: Ms. Aedin Doran.

The Licence.

Licence CN92096 is an application for afforestation of 13.25 Ha. of FT12 planting (Plot 1 is a 0.1ha "Bio" plot and Plot 2 comprises 10.52 Ha. Sitka spruce and 2.63 Ha additional

broadleaves) located in the townland of Keel, Co Longford. The application for the licence was submitted to the DAFM on the 11th of November 2022. A decision approving the licence was issued on the 1 July 2024 with conditions including the carrying out of the planting and all associated operations in accordance with the Environmental Requirements for Afforestation and the Forestry Standards Manual, retention of existing trees and hedgerows within the site, adherence to the conditions within the Appropriate Assessment Determination Report (AAD) attached to the licence, and liaising with the local Municipal Office prior to commencing forestry operations.

Background.

The proposal consists of afforestation of 13.25 Ha. of *FT12 – Mixed High Forests: mainly spruce, 20% broadleaves*. The soils on the site are described as predominantly Surface Water Gleys/Ground Water Gleys and the average slope across the site is moderate, at 2% and ranges from 0% to 8%. The vegetation on the site is mainly wet grassland Hedgerows/Tree and Scrub. The site lies in the Upper Shannon Water Framework Directive (WFD) Catchment and the Inny [Shannon]_Sc_080 Sub-catchment. The site is located within the Inny_100 River Sub-Basin. The closest WFD River Waterbody to the site is the Inny_100...470m south of the site which was of moderate status in the period 2016-2021 and is At Risk, forestry is not identified as a pressure on this river waterbody by the EPA. The Fallan_010 river waterbody lies some 862m SW of the site which was also of moderate status in the 2016-2021 period and is also At Risk. Clear-felling of forestry has been identified as a pressure on this river waterbody.

The application documents before the FAC included a Site Notice, Inet Pre Approval Submission Report, Biodiversity Map, Photo of Site Notice in Situ, Species map. These documents were made available to the FAC via the DAFM Forest Licence Viewer (FLV).

Previous Appeal:

The Application for an afforestation licence was originally submitted on 11 November 2022 and an afforestation licence was issued on 29 May 2023. Three appeals were lodged these being 009/2023, 010/2023 and 011/2023 with one of these (011/2023) also being made by the current Appellant in this appeal. All three appeals were dealt with in the one FAC decision which issued on 20/2/2024.

Previous decision of FAC: 20/2/2024 – Set aside and remit to Minister

In its previous decision of 20 February 2024 the FAC decided that for the following reasons that the decision of the Minister to grant the licence should be remitted to the Minister.

Reasons for remittal:

1. In respect of the ground of appeal concerning the Adequacy of the Public Road the FAC considered that the request by Longford County Council for the Area Engineer to be notified prior to the commencement of the works should have been included as a condition on the licence to facilitate the statutory functions of the local authority.

2. In respect of grounds of appeal concerning Existing Woodland in the Area and the contention that there was already excessive afforestation in the area and the ground of appeal concerning Impact on Farming and the contention that the proposed afforestation would impact on farming and livestock due to an increase in vermin, predators and risk of transmission of Bovine TB, the FAC noted that Appendix A of the AAD was not expressly cross referenced in the EIA determination and was concerned that it was not apparent if adequate consideration had been given to cumulative effects, including in particular non forestry projects, when making the Assessment to Determination EIA Requirement.
3. The Assessment to Determine EIA Requirement referred to and relied upon the Guidelines in relation to Water Quality, Biodiversity, Archaeology and Landscape but these Guidelines were not attached as a condition to the Licence.
4. The licence was granted subject to conditions, inter alia, the carrying out of all planting and associated operations would be in accordance with the Environmental Requirements for Afforestation and the Forestry Standards Manual. FAC noted that the document entitled Environmental Requirements for Afforestation 2016 was no longer available on the DAFM website but seemed to have been replaced by another document entitled Environmental Requirements for Afforestation Working Document v.31 Aug23. The status of this document was not clear and this was considered to be creating unnecessary confusion.

The FAC, for all of those reasons which it decided amounted to serious errors, considered that the Licence should be remitted to the Minister. With regard to all of the other grounds of appeal contained in all three appeals that were being heard, the FAC considered that the DAFM had not erred in respect of those issues and grounds in the processing of those appeals.

Current Appeal and grounds of appeal

The current appeal which was filed on 12 July 2024 repeats all of the grounds that were originally examined by the FAC in the first appeal i.e., all of the grounds in the three appeals that were dealt with by the FAC in its aforesaid determination on 20 February 2024.

There are new grounds of appeal which include a complaint from the Appellant that he and objectors “are being treated abhorrently” in that they received no further correspondence post the decision of the FAC on 22/2/24 remitting the Licence until they were notified on 1 July 2024 by the Forest Approval Committee that the Applicant’s application for a licence had satisfied the Forest Service criteria for granting a licence. He complains that they “have been completely excluded from any developments in the matter which would have a serious and negative impact on [his] family and that of [his] neighbours’ lives”. He states that “This process appears to have been carried out in an underhanded way in a deliberate attempt to hoodwink us, to allow the

development to go ahead.”

The Appellant states he sought advice from his Solicitor which advice is included in the ground of appeal. This states inter alia “a decision appears to have been made by the Minister without further reference to you even though the Appeals Board found that serious errors were made in the original application”. Later with respect to the FAC decision the solicitor says, “the grounds for remitting appear to relate to the absence of a proper Environment Impact Assessment and serious errors made in the original application.” The solicitor goes on to say:

“In my opinion there has been a significant failure by the Minister to do justice to you in this case. The Minister is well aware of your concerns about this application. You have submitted detailed objections which were considered by the Appeals Board who found that serious errors had been made. The application was remitted to the Minister who has proceeded to make a decision without notifying you of any submission received in regard to the application. To this day you have no knowledge of whether an Environmental Impact assessment has been carried out and even if one was carried out, you have an objection that your views were not canvassed in regard to the impact on yourself. For instance, you are concerned that leachate from streams and watercourse abutting the proposed development may pollute the Shannon system. Other objections to the original application are set out in your original letter. Your property is being vitally affect (sic) (for the worse in your view) by the proposed development but the Minister appears to have made a decision vital to you without affording you an opportunity to comment. This is a *Fait Accompli*. The fact that there is an avenue of appeal is irrelevant to the failure of the Minister in the first place.”

The one additional ground referred to in the Solicitor’s letter is now Ground 12 in respect of Leachate entering the Shannon Waterways which reads as follows:

“On completing further research, I have discovered that sap from Pine Trees can cause damaging Leachate to run into the local waterways. This Leachate has been found to be responsible for large fish kills. This is a major concern as there are streams running underneath and near this proposed development which all travel towards the Shannon Waterway.”

Minister’s Statement of Fact

The Minister’s Statement of Facts (21/2/2025) in response to FAC069/2024 states:

“The documents are available publicly on the Forestry Licence Viewer.

All issues raised in attached Grounds of Appeal have previously been addressed within the Statement of Fact (June 2023). The FAC also considered the Grounds of Appeal and Statement of Fact and concluded that the Forest Service had erred (sic) in relation to EIA Assessments only (Feb 2024). A new assessment to determine the requirement for EIA was carried out in June 2024. The Forest Service has adhered to the request of the FAC and has addressed all issues raised in the Grounds of Appeal.

Grounds – Various issues raised around application including landscape, water quality, endangered species, personal impacts, anti-social behaviour, fire risk, predators, forestry already I locality, impacts on local infrastructure and leachates flowing into the Shannon Waterways

“The Department is going to take all grounds of appeal raised in this appeal in one response. The Department would like to refer to FAC appeal decision FAC 009/2023, FAC 010/2023 & FAC 011/2023 regarding CN92096. The FAC made a decision on these appeals on the 20th February 2024 setting aside the decision of the minister. The basis for the set aside decision was broadly around the areas of the EIA assessment. All of the grounds of appeal raised in this appeal have previously been raised and adjudicated upon by the FAC in their decision from the 20th February 2024. The Department is not going to address/respond to all of these grounds of appeal again which have already been addressed by the FAC in favour of the Minister. The Department has addressed the issues raised in the previous FAC appeal decision and confirm that this approval was issued in line with the necessary legal and procedural requirements.”

Discussion - The new Licence that is the subject of this appeal

Following the decision of the FAC on the original Licence application and the remittal of that licence back to the Minister it was necessary for the Minister to re-examine the licence application taking into account and addressing the serious errors that the FAC had identified and which had obliged the FAC to remit the licence to the Minister. In considering FAC069/2024, in addition to addressing all of the grounds of this second appeal it is also necessary for the FAC to review the new Licence to see if it has addressed the serious errors that had been identified by the FAC in the first appeal.

The new licence addresses those errors as follows:

1 Adequacy of the Public Road

The new licence now includes a condition which reads:

“ Liaise with local Municipal Office prior to commencing forestry operations. Reason - in the interest of public safety.”

2 Existing woodlands in the area and concerning Impact on Farming

As was the case with the previous AA report the new AA Report in Appendix A In-combination Report does now identify non forest projects and assesses the in-combination effects of both forest and non-forest plans and projects.

The new Assessment to Determine EIA Requirement of 1 July 2024 contains the following under the heading of NEIA Sub Threshold Determination:

“Having considered:

N/A

1) The physical characteristics and design of the afforestation project, as detailed in the Environmental Considerations section, the Form 1 application form and accompanying maps, and any other supplemental reports submitted by or on behalf of the Applicant; 2) The location of the project, with particular regard to the environmental sensitivity of geographical areas identified above that could be affected

3) The type and characteristics of potential impacts, **in particular the cumulation of any such potential impacts with other existing and/or approved afforestation projects summarised**

above or other non-afforestation projects listed in the AA in-combination report for the project, and where the considerations made are further detailed in Schedule 3 of the Forestry Regulations 2017; and

4) The questions and answers above (as informed by established procedures and protocols, and by related reports submitted on behalf of the Applicant):

- It has been determined that the project is unlikely to give rise to significant effects on the environment by virtue of its nature, size and location and consequently, an environmental impact assessment is not required.” (emphasis added) Yes.”

The highlighted passage above does appear to indicate that the screening does now identify non forest projects and assesses the in-combination effects of both forest and non-forest plans and projects and this leads to the “yes” conclusion that the project is unlikely to give rise to significant effects on the environment by virtue of its nature, size and location and consequently, an environmental impact assessment is not required. Unfortunately, all of that is somewhat undermined by the fact that there is an entry opposite the “Having considered” box which reads “N/A” which suggests that this screening consideration was not considered at all as the Inspector is apparently concluding that this question or consideration is not applicable. That would appear to be a clerical error given that there is a “yes” conclusion to the question as to whether the project is unlikely to give rise to significant effects on the environment which suggests that the matter has indeed been considered. Nonetheless, given that that this very issue was highlighted as an issue leading to the previous FAC decision that there had been a serious error would one have expected more care to be exercised to ensure that the answers were correct the second time around. As the licence is being set aside and remitted for other reasons this is an issue that the Department will also have to address.

3 Guidelines in relation to Water Quality, Biodiversity, Archaeology and Landscape

The Assessment to Determine EIA Requirement is an entirely different form and no longer contains the question – “Will adherence of this proposal to the Forestry and Water Quality Guidelines, and any additional conditions attached to the approval be sufficient to prevent any potential significant impact to aquatic zones and their Q value”

It was this question and related answer identifying the Guidelines in relation to Water Quality, Biodiversity archaeology and Landscape which triggered the FAC response that the said guidelines were not attached as a condition to the licence.

The new Licence contains no express reference to those particular guidelines.

There is instead a requirement in the new Licence to comply with the Environmental Requirements for Afforestation which at paragraph 1.1 states:

“The overall aim of these Environmental Requirements for Afforestation is to ensure that the establishment of new forests are carried out in a way that is compatible with the protection and enhancement of our environment, including water quality, biodiversity, archaeology and landscape.”

The contents of the Environmental Requirements for Afforestation go on to set out detailed requirements in respect of each of those areas of the environment including water quality, biodiversity, archaeology and landscape and which are conditioned into the new licence and that

deal with the design stage, site works and ongoing management of forestry operations including afforestation.

Accordingly, the concerns of the previous FAC panel in respect of this issue are now addressed.

Separately, it is noted that in the Determination for EIA Requirement under the heading of Natural resources: Water and Freshwater peal Mussel (FPM) the following is stated:

“- Is the project area within or immediately upstream of the sub-basin(s) of a river waterbody deemed to be 'At Risk' or subject to review under the current River Basin Management Plan?

Yes

- Is the project area within or immediately upstream of the sub-basin(s) of a river waterbody, the status of which is 'Bad' or 'Moderate' under the current River Basin Management Plan?

Yes

...

- Has this sensitivity been addressed by the Ecology Section and any resulting recommendation(s) enacted, either through project redesign, conditions to be attached to the afforestation licence (if issued), or refusal?

N/A”

It would appear that this question is meant to address all of the previous questions under this heading of Natural Resources: Water and Freshwater peal Mussel (FPM). If that is so it would appear that the answer of “N/A” to the final question quoted above would be indicating that the risks posed by the proposed afforestation to the river water bodies that are classed as bad or moderate have not been addressed in which case this would have had to have been regarded by the FAC as a serious error warranting a remittal. This answer appears however to be inconsistent with the conditions that have been attached to the Licence in respect the requirements to comply with the Environmental Requirements for Afforestation and the Forestry Standards Manual and the conditions requiring compliance with the conditions within the Appropriate Assessment Determination Report dated 22/05/2024 which includes conditions designed and intended to protect water sources including sub-basin of river water bodies. In addition, the conclusions of the Assessment to Determine EIA Requirement and the AA Determination are that there are unlikely to be significant environmental effects and that there would be no adverse effects on the integrity of protected sites. It would appear that the N/A answer is not accurate or is not the intended answer and may simply be wrong. In any event as the Licence is being remitted for further consideration by the Minister on other grounds this issue should be reviewed and clarified if a new licence is to be issued.

4 Environmental Requirements for Afforestation and the Forestry Standards Manual.

The conditions attached to the Afforestation Licence under the Forestry Act 2014 and the Forestry Regulations 2017 as amended are as follows:

“2. The afforestation project and all associated operations shall be carried out and completed in accordance with the measures set out in the Environmental Requirements for Afforestation and the Forestry Standards Manual (as amended by periodic Circulars). [Note: These documents may

be found on the Department's website, alongside the amending or updating Circulars, which are arranged by year.] Reason: To ensure good forest practice and the protection of the environment.

...

5. Any additional conditions, that are over and above what is specified in the application.
- The afforestation project and all associated operations shall be carried out and completed in accordance with the measures set out in the Environmental Requirements for Afforestation and the Forestry Standards Manual (as amended by periodic Circulars). Reason: In the interest of clarity and to ensure good forest practice and the protection of the environment."

This document Environmental Requirements for Afforestation which is to be found on the Department's website seems to be finalised and is now dated June 2024. These conditions and the update to the Environmental Requirements for Afforestation removes the potential for confusion.

Conclusion on compliance with earlier FAC decision

The FAC is satisfied that the errors identified in the previous FAC decision of 20/2/2024 being errors 1, 3 and 4 above have now been rectified but error 2 will need to be re-addressed in any new decision as will the issue of the "N/A" response in the context of Natural resources: Water and Freshwater peal Mussel (FPM) as referred to above as an additional point under error 3.

Original grounds of appeal but repeated for this appeal

The Appellant has repeated his original grounds of appeal and these can be summarised as follows:

That the development does not coincide with the Longford County Development Plan. That the land is not suitable for afforestation because of the soil type and poor drainage, that the landscape is protected and that there are listed Views & Prospects in the Longford County Development Plan along the road, that the public roads are not suitable. That the afforestation will create a risk of forest fire, that there will be increased anti-social behaviour, that there will be an adverse impact on the residential amenity of the Appellant's dwelling, that there will be an adverse effect on water quality and a vulnerable aquifer, that the site is hydrologically connected to an SAC, that there are protected species of birds in the locality, that there will be an increase in natural predators in the area and that there is already too much forestry in the area. The Appellant submitted a report from a Health & Safety Consultant in support of the grounds of appeal relating to the risk of forest fire, traffic management, noise & dust control, damage to watercourses and illegal dumping.

1. The development does not coincide with the Longford County Development Plan
The FAC is satisfied that in light of the conditions attached to the licence and the reasons and conclusions which follow it has not been established that the development will significantly impact upon designated habitats, archaeology, high amenity area, protected views or scenic routes, or will be unacceptably obtrusive in the landscape, or present a risk to sensitive

ecosystems or water quality. Accordingly, it cannot be said that it does not “coincide” with Longford CDP.

2. Land suitability for Afforestation

The grounds of appeal submitted that the site does not align with the suitability requirements of the Longford County Development Plan 2021-2027 as the soils on the site are poorly drained and is unsuitable for forestry, are underlain by poorly drained soils and has an increased risk of run off to streams and subsequent eutrophication. The FAC noted that the site was inspected by the DAFM ecologist, and the ecologist’s response to the appeals dated 14/08/2023 and that he was satisfied that the site is suitable for planting in accordance with the DAFM publication “Land types for Afforestation” of 2017. The lands are comprised of improved agricultural land in pasture. The FAC noted that mound drains are proposed on the site and that additional silt traps are to be provided, as indicated on the biomap and that these are in accordance with the Forestry Standards Manual & Environmental Requirements for Afforestation. The FAC is not satisfied that the DAFM has erred regarding these grounds of appeal.

3. Environmental Requirements for Afforestation

The grounds of appeal contend that there is a significant risk to the water quality in the area as a result of the proposed development and its potential for run off. There are two streams (Taghshinny and Fallan) in close proximity, and both drain to important water source in the county. Both streams are currently listed as being at risk of not meeting Water Framework Directive objectives and both are listed as being of moderate quality only. The fact that the site has extremely poorly drained soils will increase probability of surface water run-off into these streams. It is also alleged that the forest may result in excessive shading of watercourses and change how the water flows within the catchment area. It is submitted that this can lead to acidification of waters, soil erosion and discharges of silt, all of which can damage fish, fish food and the aquatic system.

In their SoF responding to FAC069/2024, the DAFM submitted that they had already addressed most of the grounds of appeal in their previous statements responding to appeals in June 2023. With regard to Water Quality the FAC noted that the site was inspected by the DAFM ecologist and the FAC had regard to both the Forestry Inspectorate and ecologist’s response to the previous appeals against this licence. The FAC also noted that the licence conditions require the adherence to Forestry Standards Manual & Environmental Requirements for Afforestation and both documents contain measures to protect water quality, in addition the licence requires adherence to the detailed mitigation measures set out in the DAFM AAD of 22/5/2024 for water setbacks, silt and nutrient controls, retention of hedgerows and field boundaries, the preparation, storage and use of potentially hazardous material, the prohibition of the use of fertiliser, the application of Herbicide and the control of invasive species. The DI notes that examination of the OPW flood layer 2021 reveals that the project does not overlap with a flood risk area and evaluation of the GIS layer available in addition to field inspection deems the establishment of the plantation will not cause flooding to neighbouring properties.

The FAC noted that Appendix A of the afforestation approval letter is titled “Operational Proposals that have been approved and must be implemented in full as conditions of both the Afforestation Licence and the Non-Grant Aided Technical Approval for the Afforestation Scheme” and that this section usually sets out the details of the approved operations. In this case

the relevant data are recorded as “Not Entered”. In the particular circumstances of this case, where the proposed operations are set out in the Inet Pre-Approval Submission Report, and carried over into the Appropriate Assessment documentation on file, the FAC considers their absence from Appendix A of the approval letter to be a clerical error. However, given that the licence is being set aside for other reasons, the FAC found that any future afforestation should include accurate data in Appendix A.

With regard to the Water Framework Directive (WFD) the FAC noted that the aquatic zone on the western site boundary is hydrologically connected to the WFD River Waterbodies Inny_100 and Fallan_010, the former of which is of moderate status and the latter is at good status in the 2019-2024 period and are WFD categorised as At Risk. The afforestation operations would not involve any direct exploitation of either river waterbody, but poorly sited and managed forestry operations have been identified as a potential source of water pollution by the EPA, including through sedimentation, eutrophication and acidification. The FAC noted in particular the mitigation measure requiring that mound drains, and collector drains must not connect to the existing aquatic zone or relevant watercourse.

The FAC is not satisfied that the DAFM has erred regarding these grounds of appeal.

4. Groundwater and linkage to SACs (particularly bogs)

The grounds of appeal refer to the risk of the proposal to the underlying aquifer. The FAC noted that publicly available information from the EPA indicates that the site is underlain by an aquifer of high to extreme vulnerability. The FAC noted that that no fertiliser is to be applied on the site and that the use of herbicide for vegetation control would be by manual application and that there are mitigation measures for the preparation, storage and use of potentially hazardous material, the prohibition of the use of fertiliser, and the application of Herbicide. The FAC noted that the grounds do not articulate how the river waterbody or water quality might be impacted in this case or how the proposed mitigation measures will fail to be effective in protecting water quality or causing it to deteriorate. The FAC also noted that the mitigation measures set out in the AAD, and the licence conditions are specifically for the protection of aquatic-based species and habitat and water quality in the adjoining watercourses. The lands are not located in an area of potential acid sensitivity and lie on mineral soils. The FAC considers that there is no evidence before it that any waterbody may be affected, for the purposes of the WFD. The Appropriate assessment Determinations of 2/5/2023 and 22/5/2024 both find that the proposed project individually or in combination with other plans or projects will not adversely affect the integrity of any of the assessed European sites having regard to their conservation objectives and to the mitigation measures that are conditioned into the licence. Therefore, the FAC is not satisfied that the DAFM has erred regarding these grounds of appeal.

5. Site is in an upland area with Protected views and prospects

This ground of appeal contends that the proposal is contrary to the Longford County Development Plan 2021-2027 with reference to the impact on listed views & prospects and the landscape. The character of the area within which the site lies is classified “Open Agricultural” where landscape sensitivity is low-medium, exception is made for Upland Areas with designated scenic views where landscape sensitivity is high. The site is located on local road L1109 which is shown on the Protected Views Map in the development plan as I.S.13 with Intermittent Views. A kilometre north of the site is Protected View F.S.17 located on local road L5209 which has Full Views. The development plan policy is to “protect these views from development which would

interfere unduly with the character and visual amenity of the landscape.” and with regard to forestry the council “will seek to ensure that: a) Landscapes of scenic value are not unduly eroded”. The FAC noted that the licence application was referred to Longford County Council which expressed that it had no objection to the proposal subject to a number of conditions, none of which related to the impact on the landscape or scenic views. The FAC is not satisfied that the DAFM has erred regarding these grounds of appeal.

6. Endangered Birds present

A further ground of appeal contends that the landowner has failed to establish that the spotted Kestrel, Snipe, Duck and the Hen Harrier among others are not to be impacted in the long term by the loss of this feeding/nesting ground. The FAC noted that the site was inspected for the presence of the bird species mentioned and the response of the DAFM ecologist to this ground of appeal. In the absence of evidence adduced by the Appellant as to the presence of the bird species mentioned and an inspection having been carried out by a qualified ecologist noting that none of the species were present on the site the FAC is not satisfied that the DAFM has erred regarding these grounds of appeal.

7. Personal impact

The grounds of appeal contend that the afforestation will impact on the residential amenity of the Appellant by loss of “stunning view” and loss of sunlight. The Appellant contends that the proximity of the afforestation to the Appellant’s property will result in reduced sunlight to the Appellant’s dwellings and would impact on the Appellant’s health and wellbeing. The FAC noted that the site was inspected in the field and the Environmental Requirements for Afforestation and the Forestry Standards Manual (compliance with which is a requirement of the licence) specifies a minimum unplanted setback of forestry from a dwelling of 60m (or 30m with the approval of the owner of the dwelling). The FAC noted that in addition to the 60m dwelling setback, a 10m public road setback and the planting of 4-5 rows of broadleaved trees is specified on the biomap submitted with the application.

There is also a complaint that forestry operations will cause noise which will adversely affect local residents and there is mention of dust control. Planting is likely to be of short duration (4 to 6 weeks) and involve the use of excavators for cultivation and a post-driver for fencing, and that there would then be no necessity for heavy machinery on site until approximately year 15 in which case the volume of traffic and noise generated by the proposed afforestation will be limited and similarly of short duration. Further, the Licence requires forestry operations to comply with the Environmental Requirements for Afforestation and with the Forestry Standards manual (as amended by periodic circulars).

The FAC is not satisfied that the DAFM has erred regarding these grounds of appeal.

8. Anti-social activity

This ground of appeal contends that the proposed afforestation will exacerbate the existing occurrence of anti-social behaviour and illegal dumping of waste which is also present on existing forestry already in the Keel area. The FAC did not consider these to be grounds relating to the DAFM’s decision to grant afforestation licence CN92096 as the DAFM has no control over these matters. The role of the FAC is to consider whether the DAFM made a serious or significant error, or a series of errors in making the decision under appeal, and whether that

decision was made in compliance with fair procedures. Having reviewed the information before it, including the information on the FLV, the grounds of appeal, and the DAFM's statement in response to the appeal, the FAC could find no significant error or series of errors in the DAFM's decision to issue CN92096 in relation to the issues raised in the grounds of appeal nor that the decision was made without complying with fair procedures.

9. Forest Fire

In considering the ground of appeal that there is potential for forest fires associated with the proposed planting, the FAC noted the requirements set out in the Environmental Requirements for Afforestation and the Forestry Standards Manual stating that planting shall not take place within 60m of any dwelling or 30m with the written consent of the owner and that Condition 5 of the licence mandates compliance with the Environmental Requirements for Afforestation and Forestry Standards Manual amongst others and that the 60m dwelling set setback along the public road is further enhanced by the 10m road set back and the planting of five rows of broadleaved trees behind the setback. The FAC also noted that the site was inspected on the ground and that the DAFM found that the site itself is currently in agricultural pasture and that the existing adjoining forestry is not contiguous to any extensive area of unenclosed land and is itself adjoining mainly agricultural land. It is acknowledged that forest fires by and large spread from adjoining lands into forest lands, therefore given the absence of significant areas of extensively managed lands containing flammable vegetation such as purple moor grass, furze and heather contiguous to the existing forestry and the fact that the current vegetation type and land management in the area is not conducive to the initiation or spread of fire, and the unplanted setbacks and conditions of the licence, the FAC did not consider that the proposal as specified would represent a significant risk of fire in the locality and was not satisfied that an error was made on this matter.

10. Increased Natural Predators

This ground of appeal contends that the proposed afforestation will impact on the keeping of hens due to an increase in forestry increasing the risk from vermin including foxes, pine martins and mink. The FAC noted the responses to these grounds of appeal given by the DI and DAFM ecologist and that one species mentioned in the grounds of appeal (the Pine Marten) is protected in Ireland under the Wildlife Act 1976. The FAC acknowledges that the granting of an afforestation licence does not exempt the holder from meeting any legal requirements set out in any other statute. The FAC therefore considered that the DAFM had not erred in its processing of the application as it relates to this ground of appeal.

11. Forestry already in place in the Townland of Keel

Existing woodland in the area. This ground of appeal contends that there is already an abundance of afforestation in the area. The FAC noted that the DAFM in their considerations on the "Cumulative effect and extent of project" recorded answers to questions in the Assessment to Determine EIA Requirement relating to, existing afforestation of 3 years or less and any proposed afforestation within a 500m radius exceeding 50 Ha., the approximate % forest cover in the townland where the project is located and of the underlying waterbody (or waterbodies) and within 5km, both currently and five years previous. The DAFM concluded that based on the extent of the forest cover that the cumulative effect of this proposal was not likely to have a significant impact. Based on the information before it, the FAC is satisfied that the DAFM did not err in its processing of the application as it relates to this ground of appeal.

12. Impact on Infrastructure

The FAC notes that this licence application is for afforestation only and that the operational details for the licence indicate that planting will be carried out by mounding and angle notch planting, operations normally carried out without the need for heavy machinery beyond what is normally employed in typical agricultural activities. Given the limited area to be planted, the planting is likely to be of short duration (4 to 6 weeks) and involve the use of excavators for cultivation and a post-driver for fencing, and that there would then be no necessity for heavy machinery on site until approximately year 15 in which case the volume of traffic and noise generated by the proposed afforestation will be limited and similarly of short duration. The FAC noted that the Site Details Report confirms that the Applicant has stated that the site has adequate access to manage the site and that DAFM inspected the site.

Regarding Adequacy of the public road the FAC noted that the licence was referred to Longford County Council and that in its response the county council required conditions to protect the public road network and while the conditions were not included in the licence, however, there are statutory provisions under the Roads Act to ensure roads are maintained in a fit condition. The Licence does include a condition as requested by the County Council requiring the Applicant to liaise with the County Council. It will be for the County Council to ensure that the public roads will be cleaned and maintained.

13. Leachate.

This ground will be considered later in this letter.

14. Health and Safety.

This ground has been dealt with under the headings discussed above.

New Grounds of Appeal

Apparent Lack of Public Participation

As stated above the Appellant believes he was not in effect afforded a right to participate in the reconsideration by the Minister of the licence and has supported it by advice of his solicitor also alleging a lack of participation including in particular in what is described as an Environmental Impact Assessment.

The FAC in its concluding paragraph to its decision of 20/2/2024 which was furnished to all of the Appellants including the Appellant in this appeal and which was also uploaded onto the FLV website for this particular licence application states, inter alia:

“The FAC is thus setting aside and remitting the decision of the Minister in relation to licence to carry out a new Assessment to Determine the Requirement for EIA before a new decision is made and to ensure that licence conditions are clearly stated so as to be enforceable.”

The Appellant was thereby on notice that the Licence application was remitted back to the Minister, and the Minister was obliged to carry out a new Assessment to Determine the Requirement for EIA before a new decision was made and to ensure that licence conditions were clearly stated so as to be enforceable. There was and is no requirement that the Appellant be notified again that the licence was back before the Minister. That is already readily apparent in the FAC decision. The Appellant had already appealed the licence and had made submissions on

the original licence application. He was already familiar with the licensing process and the appeal system. There was nothing to prevent him from making further submissions to the Minister following the remittal of the licence to the Minister. He did not do so and the only explanation for this omission is that he was not notified of something that he was already aware of by reason of the decision of the FAC and the sentence quoted above. If, after that decision he had any doubts or queries about the process, there is no evidence that he made any enquiries as to what was to happen.

The FAC remitted the decision in order that the Minister carry out a new Assessment to determine the Requirement for EIA, in other words, to do a screening exercise to see if an EIA was required or not and not to do an EIA itself. There is no entitlement in either EU law or Irish law to a right of public participation for a screening decision for EIA. That entitlement only arises where the EIA itself is required.

In C41/24 Waltham Abbey the Court of Justice states:

“38 By contrast, Directive 2011/92 does not expressly lay down an obligation to consult the public during that screening procedure. Recital 29 of Directive 2014/52, which explains the objective pursued by Article 4(4) to (6) of Directive 2011/92, states that ‘taking into account unsolicited comments that might have been received from other sources, such as members of the public or public authorities ... constitutes good administrative practice’, while also stating that ‘no formal consultation is required at the screening stage’.”

The Court of Justice goes on to state that where comments have been received spontaneously from the public the competent authority should take them into account in the screening exercise. The competent authority should also, if it has a doubt, seek more information from the developer if necessary. But if it does not have a doubt that there is no likelihood of significant effects it can proceed to screen out the need for an EIA.

It is also to be noted that when the DAFM carried out a second Appropriate Assessment following the remittal of the licence back to the Minister a further 30-day public consultation was held but no observations were submitted by the public.

In those circumstances the FAC does not believe that the Minister has erred in respect of this ground.

Leachate.

As indicated the Appellant pleads that on completing further research, he has discovered that sap from Pine Trees can cause damaging Leachate to run into the local waterways and this can be responsible for large fish kills. He says this is a major concern as there are streams running underneath and near this proposed development which all travel towards the Shannon Waterway.

Firstly, it is to be noted that this licence for afforestation is not for the planting of pine trees but for the planting of Sitka Spruce with a 20% of broadleaves (10.52 Ha. Sitka spruce and 2.63 Ha. additional broadleaves). Sitka Spruce would have different characteristics from pine trees and the site for this proposed afforestation is not in an area that is acid sensitive. Secondly, the ground is merely an assertion and provides no evidence whatsoever. This is despite the fact that

the Appellant says he has carried out research but if so, he has not provided copies of that research or identified it any way. He has failed to comply with his obligation under section 14B (4) of the Agriculture Appeals Act 2001 to provide “all of the documents and evidence upon which he or she intends to rely to support those grounds.”

Thirdly, the licence as granted includes conditions requiring compliance with the Environmental Requirements for Afforestation and the Forestry Standards Manual and the conditions set out in the AA Determination. These documents and conditions set out requirements which protect the relevant water sources and have enabled the Minister to conclude that there is no likelihood of significant effects on the environment and no adverse effects on the integrity of protected sites. Accordingly, the FAC is of the view that this ground has not been established.

In-combination Report and County Development Plan

In the course of reviewing the In-combination Report which was updated to 22/5/2024 the FAC identified that reliance was placed upon the Longford County Development Plan 2015 – 2021 and the objectives of that plan in relation to the Natura 2000 Network are extensively quoted in that Report. That County Development Plan was replaced by the Longford County Development Plan 2021- 2027 which came into force on Tuesday 30th November 2021. That clearly predates the update of the In-combination Report which occurred on 22/5/2024. That revised Plan contains a revised and updated plan in respect of Natural Heritage and the Environment including in respect of protected sites, in addition of course to significant revisions to the other major elements of the Plan.

Given that the obligation imposed by Article 6.3 of the Habitats Directive requires the proposed afforestation project to be assessed in combination with other plans or projects and that this must include the most up to date county development plan it transpires that the failure to consult the 2021-2027 Longford County Development represents a significant lacuna in the assessment and therefore a serious error which requires that the licence be remitted back to the Minister to review a possible granting of a new licence against the background of the new Longford County Development Plan. This is a regrettable development particularly as the Minister had rightly updated both the AA Determination and Assessment for EIA Requirements, but it is necessary as the obligations contained within Article 6.3 of the Habitats Directive in the carrying out of the necessary Appropriate Assessment have to be upheld.

Conclusion

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal, submissions made, and the statement of fact submitted by the DAFM. Based on the evidence before it, as outlined above, the FAC is satisfied that a significant or serious errors was made in the making of the decision to issue CN92096. The FAC is thus, setting aside the decision and remitting same to the Minister in accordance with Section 14B of the Agriculture Appeals Act 2001 as amended, to carry out a new Appropriate Assessment Determination including being based on, inter alia, an in-combination assessment of all relevant plans and projects for the purposes of compliance with Article 6(3) of the EU Habitats Directive, and to complete an assessment to determine EIA requirement which clearly considers the project’s potential to contribute to a cumulative impact on the environment along with other

forestry and non-forestry projects before a new decision is made, the answers to Natural resources: Water and Freshwater peal Mussel (FPM) category, and that any future licence decision should accurately detail the approved operations in Appendix A of the approval letter.

Yours sincerely,

Edmun Carroll
On behalf of the Forestry Appeals Committee