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27<sup>th</sup> July 2020

**Subject:** Appeal FAC361/2019 regarding licence LS14 –FL0021

Dear [REDACTED]

I refer to the appeal to the Forestry Appeals Committee (FAC) in relation to the above licence issued by the Minister for Agriculture, Food and the Marine (DAFM). The FAC established in accordance with Section 14 A (1) of the Agriculture Appeals Act 2001 has now completed an examination of the facts and evidence provided by all parties to the appeal.

#### **Background**

Licence LS14-FL0021 for felling of 4.46 ha at Crannagh, Ballyprior, Co. Laois was issued by the Department of Agriculture, Food and the Marine on 31<sup>st</sup> October 2019.

#### **Hearing**

A hearing of appeal FAC361/2019 was held by the FAC on 22<sup>nd</sup> of July 2020.

FAC Members: Mr. Des Johnson (Chairperson), Mr. Pat Coman, Mr. Vincent Upton, Mr Jim Gallagher.

#### **Decision**

Having regard to the evidence before it and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to cancel the decision of the Minister regarding licence LS14-FL0021.

The licence decision relates to 4.46 ha of felling and replanting at Crannagh, Ballyprior Co. Laois. The forest is composed mainly of Norway spruce with some Beech and Japanese larch and will be replanted with Norway spruce. The soil type is approx. 0.48%, Grey Brown

Podzolics, Brown Earths (medium-high base status) and 99.65%, Renzinas, Lithosols and the slope is described as steep.

The licence was granted with standard conditions. The proposal was referred to Laois County Council but no response was provided. The DAFM undertook a screening for appropriate assessment, in particular the River Barrow and River Nore SAC and the Ballyprior Grassland SAC, and screened the proposal out for appropriate assessment.

There is one appeal against the decision. The grounds include that on the basis of information submitted it is not possible to grant a Licence which would be in compliance with the EIA and Habitats Directives having regard to specific judgements of the CJEU. Furthermore, the grounds include that the test for Appropriate Assessment Screening in Irish Law is set out by Finlay Geoghegan J. in Kelly v ABP and goes on to quote from that judgement. The grounds also suggest that if mud was to enter the lakes it could have an effect on the SAC/SPA and that the fact that the distance is over 15 km has no relevance to the fact that there still may be an effect. The specific lakes are not identified.

In a statement to the FAC, the DAFM stated that they are satisfied that the decision met their criteria and guidelines and that they confirm the licence. They suggest that all Natura sites within 15km have been screened out due to a lack of connectivity to any of the Natura sites. They also state that they deem that the project cannot have an impact individually or in combination with other plans or projects in the area. Finally, they state that there are no lakes near or adjacent to this felling licence application area, that the nearest lake (not hydrologically connected) is 9.5 km to the south and that there are no streams or rivers directly connected to the felling area.

The DAFM made an additional submission of a revised appropriate assessment screening and in-combination assessment, dated 8<sup>th</sup> of May 2020 which was provided to all parties. In the revised screening the DAFM concluded that a possible effect on the Ballyprior Grassland SAC could not be ruled out due to the close proximity to the site while the River Nore & River Barrow SAC was again screened out due to lack of hydrological connectivity.

In considering the appeal and before making a decision, the FAC considered the likelihood of possible significant effects on European sites and the environment.

There are two European sites within 15km of the proposal, the River Barrow and River Nore SAC and the Ballyprior SAC. Given the nature, scale and location of the proposal, significant effects on European sites outside of this radius were not considered likely. The boundary of the River Barrow & River Nore SAC is over 4km from the proposal. Due to the degree of separation and the absence of hydrological connections, significant effects on this SAC are not considered likely. The boundary of the Ballyprior Grassland SAC adjoins the western boundary of the

proposal. This SAC is relatively small at 44.2 ha and has a conservation objective to maintain or restore the favourable conservation condition of the habitat semi-natural dry grasslands and scrubland facies on calcareous substrates (*Festuco Brometalia*) and is a priority habitat for orchid. Forest replanting outside of the site is identified as potentially having a medium impact, both positive and negative, in the Natura 2000 data form prepared by the NPWS. Having regard to the close proximity of the proposal to this SAC, the size and conservation objective of the SAC, and the nature of the proposal the FAC does not consider that there is sufficient information available to it regarding possible effects of the proposal on the conservation objectives of this SAC.

The EU EIA Directive (Directive 2011/92/EU as amended by Directive 2014/52/EU) 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. Annex II contains a class of project specified as "initial afforestation and deforestation for the purpose of conversion to another type of land use" (Class 1 (d) of Annex II). The Irish Forestry Regulations in relation to forestry licence applications require the compliance with the EIA process 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. Thus the FAC considers that the felling of trees and subsequent replanting, as part of a forestry operation with no change in land use, does not fall within the classes referred to in the Directive, and is similarly not covered by the Irish regulations (S.I. 191 of 2017).

The proposal is for felling of an area of 4.46 ha within a commercially managed forest and the resource will be renewed through replanting. The general area is remote and rural and there are other areas of forest and agricultural land in the surrounding landscape. Given the scale of the proposal and the absence of a hydrological connection he FAC does not consider that the proposal poses a significant threat to any lakes or water quality generally. Having regard to the nature, scale and location of the proposal, and other projects, the FAC concluded that there is no real likelihood of the proposal having a significant effect on the environment.

However, due to the lack of available information regarding possible effects arising from the proposal on the conservation objectives of the Ballyprior Grassland SAC, the FAC has decided to cancel the decision regarding licence LS14-FL0021 .

Before making its decision, the FAC considered all of the information submitted with the application, the processing of the application by the DAFM, the grounds of appeal and any submissions received.

Yours sincerely,

Jim Gallagher  
Jim Gallagher on behalf of the Forestry Appeals Committee