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28th July 2020

Subject: Appeal FAC382/2019 regarding licence LM06-FL0126

Dear [REDACTED]

I refer to your appeal 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 has now completed an examination of the facts and evidence provided by all parties to the appeal.

Background

Licence LM06-FL0126 for felling of 8.47ha and replanting of 7.2 ha at Garvagh (Dromahaire) Co. Leitrim was issued by the Department of Agriculture, Food and the Marine (DAFM) on 15th November 2019.

Hearing

A hearing of appeal FAC382/2019 was held by the FAC on 23rd 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, including the licence application, Departmental file, the notice of appeal and a consultant's report, and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to confirm the decision of the Minister regarding licence LM06-FL0126

The licence decision relates to 8.47 ha of felling and replanting of 7.2 ha at Garvagh Co. Leitrim. The forest is composed of Sitka spruce and will be replanted with Sitka Spruce. The

soil type is approximately 42.09% Blanket Peats and 11.91% Basin Peats, Blanket Peats and 45.11% Surface water Gleys 0.86% Variable and 0.02%, Peaty Gleys and the slope is described as moderate.

The licence was granted with standard conditions and a number of other conditions regarding the haulage of timber. The proposal was referred to Leitrim County Council, the council replied on 3rd of April 2019 it had no objection to the development but proposed eleven conditions mainly concerning the transport of timber and possible damage to roads in the area.

The DAFM undertook a screening for appropriate assessment, in particular the Lough Gill SAC, Boleybrack Mountain SAC, Unshin River SAC, Lough Arrow SAC, Lough Arrow SPA and Union Wood SAC and screened the proposal out for appropriate assessment

There is one appeal against the decision. The grounds suggest 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 suggest that the test for Appropriate Assessment Screening in Irish Law is set out by 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 the grounds of appeal.

In a statement to the FAC, the DAFM stated that they were satisfied there was no possibility of the project itself (i.e. individually) having a significant effect on these Natura sites, and there was no potential for it to contribute to any cumulative adverse effects on the sites when considered in-combination with other plans and projects. DAFM deemed that this project, when considered in combination with other plans and projects, would not give rise to the possibility of a significant effect on these Natura sites. They decided that the project could be screened out and an Appropriate Assessment was not required in relation to these Natura sites.

DAFM decided that the application met their criteria and guidelines and they confirmed the licence. The reasons they based their decision on were, absence of any pathway to the sites hydrological or otherwise, separate water body sub-catchment to that containing the Natura site and separation distance between the Natura site and the project.

In considering the appeal and before making a decision, the FAC commissioned a report from an independent consultant that included an examination in relation to the requirements of the Habitats and EIA Directives and a copy is contained on the public file.

There are six European sites within 15km of the proposal, which are considered in the report, Lough Gill SAC at approximately 3.50km, Boleybrack Mountain SAC at approximately 8.641km, Unshin River SAC at approximately 10.709km, Union Wood SAC at approximately 14.5km, Lough Arrow SAC and Lough Arrow SPA at approximately 12.48km. It is noted that there is no hydrological connection between the proposal and any European site, that the qualifying interests have not been recorded on the proposal site and it would not be considered as suitable habitat,. There are a number of planning permissions granted in the area but these when considered in combination with the proposal would not result in any likely significant effect on any European site. There are no measures included on the licence that are designed to mitigate effects on European sites and none were taken into account in the screening. The FAC are satisfied that the screening included in the report was conducted appropriately and adopts the screening. The FAC concluded that the proposed felling and replanting, itself or in combination with any other plans or projects, is not likely to result in any significant effects on any European sites.

As outlined in the report, the EU Directive sets out, in Annex 1 a list of projects for which EIA is mandatory. Annex 11 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. Neither afforestation nor deforestation (nor clear-felling) are referred to in Annex 1. Annex 11 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 11). The Irish Regulations, in relation to forestry licence applications, require 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. The report 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 report goes on to consider the likelihood of effects on the environment and concludes that the proposed development would not be likely to give rise to significant effects on the environment of itself or cumulatively with other permitted projects. The FAC noted that the proposal would occur within a commercially managed forest and in a rural and agricultural landscape and considered the information before it including that in the report. The FAC is satisfied that the considerations outlined in the report are correct and adopts those considerations. The FAC concluded that the proposal does not fall within the classes of development included in the EU EIA Directive and is not likely to result in significant effects on the environment.

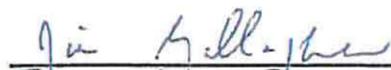
No specific lakes were identified in the grounds of appeal but given the lack of hydrological connection, the nature and scale of the proposal and the conditions attached to the licence the

FAC concluded that the proposal does not pose a significant threat to any lakes or water quality generally.

In coming to its decision, the FAC concluded that the proposed development would be consistent with Government policy and Good Forestry Practice.

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

FAC Case Ref: 382/2019

DAFM Case Ref: LM06-FL0126

Details of application:

The application is for the clear-felling of an area of 8.47 hectares of Sitka Spruce and the replanting of Sitka Spruce on 7.20 hectares with 1.27 hectares left as open space. The 3rd Schedule of the licence does not, however, refer to the provision of open space on part of the lands. A copy of [REDACTED] Harvesting and Establishment Environmental Rules was submitted with the application. A copy of the [REDACTED] Site Safety Rules was also submitted. A screening for Appropriate Assessment was submitted with the application. This concluded that there is no potential for impact on Natura sites due to the project itself or in-combination with other permitted developments. 2 planning permissions in the area are referenced in the in-combination assessment

Location and details of project lands:

The project lands are located, in the townland of Garvagh, in a rural area of County Leitrim about 4 kilometres to the south of the village Drumahaire. The lands in the area rise upwards from the valley of the Bonet River towards the mountains between Lough Allen and Lough Arrow to the southeast.

The 300-foot contour is located near the northern end of the project lands and the southern end of the lands are located about halfway between the 300 and 400-foot contours. A Bench Mark a short distance south of the lands indicates a height of 363.5 feet AOD. The screening report indicates that the soils in the area are a combination of peats and gleys. The slope is indicated to be medium at 0-15%. The OS maps indicate a stream or drain along part of the northern boundary of the lands. This flows towards the north and eventually joins the Bonet River in Drumahaire. The OS maps also indicate a stream/drain along the southern end of the lands. This flows westwards and then joins a larger stream which flows northwards towards Drumahaire.

The land uses in the area are a mixture of agriculture and forestry with a significant amount of forestry in the local area. The project lands immediately abut a large forested area to the west. There is also a significant amount of forestry to the southeast and further north and northeast.

Decision of DAFM:

The Department decided to grant a licence subject to 11 conditions. The conditions are generally of a standard variety requiring compliance with the Forest Service's standard requirements for such developments. The conditions also require that the applicant consults with Leitrim Co. Council and that the clear felling should be completed prior to March 2020. In a response to a consultation request Leitrim Co. Council had raised some issues about the standard and proposed improvements to a local road serving the area. The Co. Council had requested that the clear felling be carried out prior to March 2020. It had not objected in principle to the development

proposed. None of the conditions contained in the licence appear to have been designed to mitigate or reduce effects on any Natura 2000 site.

Grounds of appeal:

It is submitted that, based on the information submitted, it is not possible to make a decision which would be in compliance with the requirements of the Habitats and EIA Directives.

The appellant refers to a High Court decision given by Ms Finlay Geoghegan on 25 July 2014. He submits that the test for Appropriate Assessment in Irish law is set out in this judgement. The judgement quotes from a European Union Advocate General's Opinion which states that for Appropriate Assessment to be a mandatory requirement there is no need to *establish* that there would be a significant effect on a Natura 2000 site. It is merely necessary to determine that there *may* be such an effect. A further quotation, from the EU Advocate General's Opinion referred to in the judgement, states "It follows that the possibility of there being a significant effect on the site will generate the need for an appropriate assessment for the purposes of Article 6(3)".

The appellant submits that if mud was to enter the lake it could have an effect on the SAC/SPA. He submits that the fact that the distance is over 15 kilometres has no relevance to the fact that there may still be an effect. (The appellant does not state which lake or Natura site he is referring to).

DAFM response to appeal:

It is submitted that Appropriate Assessment screening was carried out by DAFM for European sites within 15 km of the clear-fell and reforestation project submitted for licencing. Felling licence application information submitted by [REDACTED] in the form of maps, harvesting and establishment operational procedures, as well as an Appropriate Assessment Pre-screening Report and associated Pre-screening Report methodology document were considered. Having reviewed the details of relevant European sites, their qualifying interests and conservation objectives, DAFM deemed that the project, when considered in combination with other plans and projects as identified in the pre-screening report, will not give rise to the possibility of a significant effect on the relevant screened European sites. As such, the clear-fell and reforestation project was screened out and an Appropriate Assessment deemed not required in relation to the European sites considered during the screening exercise. For the purposes of 42(16) of S.I.477 / 2011, DAFM has determined that the project will not adversely affect the integrity of any European sites. A felling licence was issued for the clear-fell and reforestation project having considered the comments and observations of referral bodies who submitted information to DAFM in respect of the licence application. There are no streams/rivers at or adjacent to the felling site. The nearest lake (not hydrologically connected) is c. 600 m to the north.

The Department carried out a revised screening for Appropriate Assessment and submitted this with the response to the grounds of appeal. This screening is based on the 2020 version of its screening procedure but it is not dated. The Department also submitted a revised list of planning permissions considered and it also

submitted details of various provisions in the County Leitrim development plan which it considers relevant to considering in-combination effects. The list of planning permissions considered totals 7 cases from the planning authority website. The submission also contains a list of various licenced forestry developments in the general area.

Appropriate Assessment screening:

There are 6 Natura 2000 sites located, at least in part, within 15 kilometres of the project lands. The Natura sites in question are:

Union Wood SAC located, at the nearest point, about 13.8 kilometres from the project lands

Lough Arrow SAC located, at the nearest point, about 11.5 kilometres from the project lands.

Lough Arrow SPA located, at the nearest point, about 11.5 kilometres from the project lands

Unshin River SAC, located, at the nearest point, about 10 kilometres from the project lands

Boleybrack Mountain SAC located, at the nearest point, about 9.27 kilometres from the project lands

Lough Gill SAC located at the nearest point about 2.56 kilometres from the project lands.

Union Wood SAC is located near Ballysadare to the northwest of the project lands. It is located in the Ballysadare River catchment whilst the project lands are located in the catchment of the Garavogue River. There is no hydrological connectivity from the project lands to the SAC. The Union Wood SAC has as its qualifying interests "Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0]". In the absence of any potential impacting pathway and having regard to the distance to the SAC the proposed development would not be likely to have any significant effect on the SAC in question.

Lough Arrow SAC is also located in the Ballysadare catchment. It has as its qualifying interests "Hard oligo-mesotrophic waters with benthic vegetation of Chara spp. [3140]". There is no hydrological connectivity from the project lands to this SAC. In the absence of any potential impacting pathway and having regard to the distance to the SAC the proposed development would not be likely to have any significant effect on the Lough Arrow SAC.

Lough Arrow SPA has as its qualifying interests Little Grebe (*Tachybaptus ruficollis*) [A004] Tufted Duck (*Aythya fuligula*) [A061] and Wetland and Waterbirds [A999]. A mature forest is not a suitable or desired habitat for the wetland and water-birds in question. The SPA is also over 11 kilometres from the project lands. Having regard to these circumstances the proposed development is not likely to have any significant effect on the Lough Arrow SPA.

The River Unshin SAC is at the nearest point about 10 kilometres from the project lands. The Unshin River drains to the northwest and it is in the Ballysadare catchment. There is no hydrological connection from the project lands to this SAC. The qualifying interests for the SAC are

Water courses of plain to montane levels with the *Ranunculus fluitans* and *Callitriche-Batrachion* vegetation [3260]

Semi-natural dry grasslands and scrubland facies on calcareous substrates (*Festuco-Brometalia*) (* important orchid sites) [6210]

Molinia meadows on calcareous, peaty or clayey-silt-laden soils (*Molinion caeruleae*) [6410]

Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*) [91E0]

Salmo salar (Salmon) [1106]

Lutra lutra (Otter) [1355]

Having regard to the absence of any hydrological connection or any other potentially impacting pathway and to the distance from the project lands the proposed development is unlikely to have any significant effect on the River Unshin SAC.

The Boleybrack Mountain SAC is located to the northeast of the project lands and at a distance of over 9 kilometres from the project lands. The mountainous area in question drains in part to the Erne catchment (northern section), in part to the Shannon catchment (southern section) and in part to the Garavogue catchment (west and northwest section). The streams to the Garavogue catchment join the Bonet River upstream of the location where the drainage from the project lands join. There is no hydrological connection from the project lands to this SAC. The SAC has as its qualifying interests

Natural dystrophic lakes and ponds [3160]

Northern Atlantic wet heaths with *Erica tetralix* [4010]

European dry heaths [4030]

Molinia meadows on calcareous, peaty or clayey-silt-laden soils (*Molinion caeruleae*) [6410]

Blanket bogs (* if active bog) [7130]

Having regard to the absence of any hydrological connection or any other potentially impacting pathway and to the distance from the project lands the proposed development is unlikely to have any significant effect on the Boleybrack Mountain SAC.

The Lough Gill SAC is located to the north and at a minimum distance of over 2.5 kilometres from the project lands. The nearest part of the SAC to the lands is at Dromahaire where the Bonet River is part of the designated area. The qualifying interests for the Lough Gill SAC are

Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation [3150]

Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (* important orchid sites) [6210]

Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0]

Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (Alno-Padion, Alnion incanae, Salicion albae) [91E0]

Austropotamobius pallipes (White-clawed Crayfish) [1092]

Petromyzon marinus (Sea Lamprey) [1095]

Lampetra planeri (Brook Lamprey) [1096]

Lampetra fluviatilis (River Lamprey) [1099]

Salmo salar (Salmon) [1106]

Lutra lutra (Otter) [1355]

In its screening the Department states that there is no direct hydrological connection from the project lands to the SAC in question. The drains or streams indicated on the OS maps suggest that there may be such a connection or such a connection may have existed in the past. In the absence of a site inspection I am not in a position to verify for certain if such a connection exists at present. I note however that the distance along any such hydrological pathway would be about 3.5 metres along the northern drain/stream and about 4 kilometres along the drain/stream at the southern end of the lands. The lands are relatively flat along the route to the SAC. At these distances I consider that any mud which might be released into the streams would be deposited well before the streams enter the SAC. In the circumstances I consider that it is unlikely that the tree felling and re-planting proposed would have any significant effect on the Lough Gill SAC.

I note that the Ballysadrae Bay SAC and SPA are located slightly more than 15 kilometres from the project lands. There is no hydrological connection from the project lands to Ballysadrae Bay. In these circumstances and having regard to the distance it is unlikely that the development would have any significant effect on the SAC. The SPA has as its qualifying interests

Light-bellied Brent Goose (*Branta bernicla hrota*) [A046]

Grey Plover (*Pluvialis squatarola*) [A141]

Dunlin (*Calidris alpina*) [A149]

Bar-tailed Godwit (*Limosa lapponica*) [A157]

Redshank (*Tringa totanus*) [A162]

Wetland and Waterbirds [A999]

A mature forest such as that involved here is not a suitable or desired habitat for the wetland and water-birds for which the SPA has been designated. Having regard to

this and to the distance involved I consider that the proposed tree felling and replanting is not likely to have any significant effect on the Ballysadare Bay SPA.

The appellant refers to the possibility of mud entering some lake. I am not aware of any lake in the vicinity and the appellant has not indicated which lake he is referring to or which Natura site might be affected. I assume he is not referring to Lough Gill which is part of the Lough Gill SAC and which has been considered above. There is a lake called Belhavel Lough about 4 kilometres to the northeast but the project lands do not drain to this lake. The department refers to a lake 600 metres to the north. I am not aware of any lake at this distance to the north.

The latest submission from the Department lists 7 planning permissions granted in the area. The permissions referred to are for 2 forest road accesses onto the public road, 2 house extensions, 1 retention of a domestic garage and a store, 1 new house and 1 meteorological mast 80 metres in height. The Department also references an application for leave to apply for substitute consent to An Bord Pleanála for a grid connection from Derrysallagh Wind Farm in Co. Sligo. There was a subsequent application to An Bord Pleanála for substitute consent for the grid connection to the national grid. (An Bord Pleanála reference 300811). The inspector's report indicates that the northern end of the grid connection is in the Garvagh Glebe Wind Farm, which is located a considerable distance away to the southeast of the project lands. The works covered by the substitute consent application had already been carried out. Substitute consent was granted on 05/02/2019. This development would have no in-combination effect on any Natura 2000 site with the tree felling and re-planting now proposed.

On checking myplan.ie I find no planning permissions in the immediate area. The nearest was permission for a revised site for a house and for retention of the house and associated works on lands about 500 metres to the east. There is permission for accesses from forest roads onto the public road some distance away to the northeast and another to the southwest. None of these accesses would serve the forest area of which the project lands form part. I do not consider that there would be any in-combination effects on any Natura 2000 site from the proposal and the developments referred to. I also consider that the development would not have any significant effect on Natura 2000 sites in-combination with developments envisaged by the County Leitrim development plan. The plan contains provisions to protect such designated sites.

I do not have details indicating the locations of other forestry related developments but as I consider that the development of itself would have no significant effect on any of the Natura sites and the projects would be self-contained and probably carried out at different times, I do not envisage any significant in-combination effects. (I note that the Department states in the screening form, that there are licences for clear-felling of 39.81 hectares and thinning of 31.38 hectares in the vicinity). The planning permissions for accesses onto the public road from forest roads, referred to above, would have no effect on the tree-felling and replanting proposed in the current application.

In the above assessment I have not considered the normal good felling practices referred to in the documentation and in the licence in forming my conclusions. I consider, however, that compliance with the various guidelines etc referred to would re-enforce my conclusions. I also consider that the practices referred to are designed

to protect the local environment, as they are general standards for all felling, and are not designed to prevent any significant effect on the Natura 2000 sites.

The proposal is clearly not necessary to or connected with the management of any Natura 2000 site. I conclude that the proposed felling and replanting, of itself or in combination with any other plans or projects, is not likely to have any significant effect on any Natura 2000 site. In these circumstances the carrying out of an Appropriate Assessment as referred to in Article 6(3) of the EU Habitats Directive is not required.

Screening for Environmental Impact Assessment (EIA):

In my screening for EIA I have regard to the requirements contained in the EU Directive (Directive 2011/92/EU as amended by Directive 2014/52/EU), in Irish regulations transposing the Directive into Irish law and to the Guidance for Consent Authorities regarding Sub-threshold Development published by the Department of the Environment in August 2003. I have had regard to the characteristics of the project, the location of the project (including the environmental sensitivity of the area) and the types and characteristics of potential impacts of the development as referred to in Annex 11 of the Directive. I have also taken account of my conclusions, set out above, in relation to the likely impact of the development on any Natura 2000 site.

The EU Directive sets out, in Annex 1 a list of projects for which EIA is mandatory. Annex 11 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. Neither afforestation nor deforestation (nor clear-felling) are referred to in Annex 1. Annex 11 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 11). The Irish 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. It appears to me that 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). I will, however, consider the likely effects of the proposal on the environment.

The site is located in an area where the predominant land use locally is forestry and the wider area has a mixture of forestry and agriculture. Forestry by its nature involves afforestation, thinning, clear-felling and re-planting. Such activities are normal and not out of character visually or otherwise in an area such as that in question. The area is not designated as being of exceptional or special visual amenity value in the current Co. Leitrim development plan. The trees to be felled are located adjacent to other forested lands and they are not prominent in views from local roads. The trees in the project lands are not prominent or significant features in the wider landscape. I consider that they are not of such exceptional visual significance or value as to be considered essential or vital components of the

landscape. I consider that the felling and replanting proposed would not have a significant impact on the landscape of the area.

The felling will give rise to the transport of timber on the local roads. This will cause some inconvenience in the short term but this is an inevitable consequence of the afforestation and would not of itself result in such likely significant effects on the environment as to require compliance with the full Environmental Impact Assessment process. (Leitrim Co Council expressed some concerns about the adequacy of the local road to cater for the transport of the timber and had required that the tree felling be completed prior to some proposed road improvements). I also consider that the tree felling and re-planting proposed, in compliance with the standard conditions referred to, would not be likely to give rise to significant effects on the environment due to any localised water or air pollution.

There are no National Monuments located within the project lands. The nearest such monuments, a Rath and Bullaun Stone, are located about 720 metres to the northeast. The next nearest monument is another Rath located about 750 metres to the west. The proposed tree felling and re-planting would have no effect on the monuments in question.

I consider that the felling proposed does not come within the classes of project covered by the EU EIA Directive. I also consider that the proposed development would not be likely to give rise to significant effects on the environment of itself or cumulatively with other permitted projects. I consider that the possibility of significant effects on the environment can be ruled out on the basis of this preliminary screening.

Overall conclusion:

I conclude that the proposed project would not be likely to have significant effects on the environment and the carrying out of EIA is not required. I also conclude that the project individually, or in combination with other plans or projects, is not likely to have any significant effect on any Natura 2000 site, having regard to the reasons for designating the sites and their conservation objectives.

Padraic Thornton

10 July 2020