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11th March 2020

Subject: Appeal against felling licence decision FAC324/2019 CN06-FL0041

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

A licence, CN06-FL0041, for the felling of 1.95 ha at Drumnatread, Co. Cavan was approved on 22nd October 2019.

Hearing

A hearing was conducted by the FAC at the Agriculture Appeals Office, Kilminchy Court, Portlaoise, Co. Laois on the 9th March 2020.

In attendance at the hearing:

FAC Members: Mr. Des Johnson (Chairperson), Ms. Mary Lawlor & Mr Vincent Upton

Decision

Having regard to the evidence before it and, in particular, the considerations and reasoning set out below, the FAC has decided to confirm the decision of the Minister regarding licence CND6-FLO041.

The decision related to proposed felling of 1.95 ha at Drumnatread, Co. Cavan. The appeal was submitted with grounds stating that *"Based on the information supplied it is not possible to make a decision which would be in compliance with the requirements of the Habitats and EIA directives."* The appeal further quoted from the High Court case *Kelly v An Bord Pleanala* [2014] IEHC 400 (25th July 2014) and raised concerns that cumulative effects had not been assessed.

The FAC has considered the information before it including the submitted application and appropriate assessment pre-screening report and the AA (appropriate assessment) screening undertaken by the DAFM. Project details, details of European sites and other plans and projects in the vicinity were provided in the submitted pre-screening report. The appropriate assessment screening undertaken by the DAFM noted one European site within 15 km, and did not consider that there was any reason to extend this distance to examine other sites. The closest European site, and only site within 15 km, is the Lough Oughter and Associated Loughs SAC which lies 14.6km to the west of the site in a separate catchment with no hydrological connection. Examining publicly available information on <https://gis.epa.ie/EPAMaps/> the FAC notes that this distance is a geometric straight line distance and that the closest water feature, that is connected to the SAC, to the forest is a stream that rises some 700 metres to the north. This stream is over 27km from the Lough Oughter and Associated Loughs SAC in terms of hydrological distance. The FAC also noted the small scale of the project.

The DAFM reached the conclusion that *"Due to the location of the project area within a separate water body catchment to that containing the Natura site, with no upstream connection, and the subsequent lack of any hydrological pathway"* that the project would have no significant effect on the European site. The DAFM reached the conclusion that *"there is no possibility that this project — wither alone or in combination with other plans and projects — will have a significant effect on this NATURA site. Therefore, the project can be screened out and an Appropriate Assessment is not required"*.

The FAC considered this conclusion to be reasonable based on the circumstances and information outlined above and the screening undertaken by the DAFM. Furthermore, the FAC considered that no mitigation measures designed to limit the impact of the proposal on a European site were taken into account and that other plans and projects were considered in the screening process. Before making its decision, the FAC concluded that this project, alone or in combination with other plans or projects, would not result in the possibility of a significant effect on a European site.

Forestry related projects included in Annex II of the EIA Directive include initial afforestation and deforestation for the purposes of conversion to another type of land use and the construction of roads. Regulation 13 (2) of the Forestry Regulations 2017 states that:

(2) The Minister shall ensure that an environmental impact assessment is carried out in respect of an application for a licence for—

- (a) afforestation which would involve an area of 50 hectares or more,

(b) forest road works which would involve a length of 2000 metres or more,

(c) afforestation which does not exceed an area of 50 hectares but which the Minister considers likely to have significant effects on the environment taking into account the criteria set out in Schedule 3,

(d) forest road works which does not exceed a length of 2,000 metres but which the Minister considers likely to have significant effects on the environment taking into account the criteria set out in Schedule 3.

The decision under appeal relates to the felling and replanting of an area of 1.95 ha, which is not afforestation or deforestation for the purposes of conversion to another type of land use. The FAC is satisfied that Environmental Impact Assessment as described in the EIA Directive is not required in this case.

The FAC concluded that the proposal is 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 including its screening for Appropriate Assessment, the grounds of appeal and submissions and observations received.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Vincent Upton', written over a horizontal line.

Vincent Upton On Behalf of the Forestry Appeals Committee

