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25<sup>th</sup> September 2020

**Subject:** Appeal FAC352/2019 regarding licence TFL00274419

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. 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**

Felling licence TFL00274419 for thinning of 5.09 ha at Drumming, Co. Longford was issued by the Department of Agriculture, Food and the Marine (DAFM) on 29<sup>th</sup> October 2019.

#### **Hearing**

A hearing of appeal FAC352/2019 was held by the FAC on 22nd September 2020.

FAC Members: Mr. Des Johnson (Chairperson), Mr. Pat Coman, Ms. Bernadette Murphy, Mr. Vincent Upton

#### **Decision**

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notice of appeal, and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to confirm the decision of the Minister regarding licence TFL00274419.

The felling licence pertains to 5.09 ha of a second thinning of Sitka spruce and Japanese larch due for thinning in 2019. As it is a thinning there would be no clearfelling or replanting. Extraction routes and stacking areas are marked on harvesting maps provided with the application and the forest adjoins a minor public road. The site is described as flat to moderate and is not crossed or adjoined by an aquatic zone. The forest is located in Shannon (Upper) Subcatchment (26C 7) of the Upper Shannon Catchment and the closest marked stream lies 400m to the northeast.

There is one appeal against the decision. The grounds suggested 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 and goes on to quote from a High Court case (Finlay Geoghegan J.in; Kelly -v- An Bord Pleanála [2014] IEHC 400 (25 July 2014)). The grounds go on to suggest that if mud was to enter lakes or rivers it could have an effect on a 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 and suggests that there was no assessment of cumulative effects.

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. The statement goes on to describe the proposal as a subsequent thinning project on a gentle north-eastern slope that adjoins open grass-covered fields. They suggest that no drainage system of any kind was observed at inspection, which indicates that natural percolation is in operation. They also suggest that as no hydrological connection to any designated site exists no effect from the project is expected.

In considering the appeal and before making a decision, the FAC undertook a screening in relation to the requirements of the Habitats Directive and an examination of effects on the environment and copies of these considerations are contained in the public file. The proposal is not connected with or necessary to the management of any European site. There are eight sites whose boundaries fall within 15km of the proposal. There are no conditions on the licence that relate to the mitigation of effects on a European site and none were considered in this screening. The FAC's conclusion concurred with the conclusion reached by the DAFM following screening.

Mount Jessop Bog SAC and Brown Bog SAC lie 5.3km and 11.2km, respectively, to the northwest and there is no hydrological connection from the proposal to these sites and the degree of separation would preclude any other form of effects on these SACs and the related terrestrial habitats from occurring. The boundary of Lough Forbes Complex SAC lies 12.9km to the northwest. This SAC covers 1,333.8 ha and forestry is not listed amongst the most important threats or pressures in the Natura 2000 data form prepared by the NPWS. The stream some 400 metres to the northeast of the forest does eventually meet the SAC at a hydrological distance of approx. 20 km. While there is no record of a hydrological connection from the forest to this stream, the area is surrounded by agricultural fields and it is possible that drains are present. However, even in the presence of a drain connecting the forest and this stream, the proposal being for a thinning is not likely to generate significant amounts of runoff, such as sedimentation or nutrient enrichment, and such a drain would not have the capacity to transport significant runoff to the stream. Even were this to occur the hydrological distance of 20km would ensure extensive dilution and settling would occur. As a result there is no likelihood of significant effects on this SAC. There is no hydrological pathway for effects on the related Ballykenny-Fisherstown Bog SPA for the same reasons. The distance of over 12.9km and the unsuitability of the site would ensure that there is no likelihood of significant effects on this SPA and the related species. Ardagullion Bog SAC lies 13.7km to the northeast in a separate catchment and no pathway for effects occurs. Lough Ree SAC lies 13.9km to the southwest in a separate catchment and downstream from Lough Forbes and there is no pathway of effects on this SAC. There is also no hydrological connection with the related Lough Ree SPA, the boundary of which is over 13.9km to the southwest, and the proposal area would not be considered to provide suitable habitat for the wetland and water birds associated with the SPA. Glen Lough lies at 8.8km to the east in a separate catchment and the proposal would occur in a semi-mature coniferous forest which would not be considered a suitable habitat for the related bird species. The absence of a connection and degree of separation results in no likelihood of significant effects on this SPA. Having

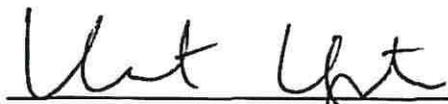
regard to the nature, small scale and location of the proposal, its degree of separation from European sites and the conservation objectives of those sites, the FAC concluded that the proposal is not likely to have any significant effect on any European site, itself or in combination with other plans or projects and that appropriate assessment under Article 6 of the Habitats Directive was not required. The FAC's conclusion concurred with the conclusion reached by the DAFM following screening.

The EU Directive sets out, in Annex I a list of projects for which EIA is mandatory. Annex II contains a list of projects for which member states must determine through thresholds or on a case by case basis (or both) whether or not EIA is required. Neither afforestation nor deforestation are referred to in Annex I. 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 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. 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 FAC does not consider that the proposal falls within the classes included in the Annexes of the EIA Directive or considered for EIA in Irish Regulations and, following examination, the FAC concluded that the proposed development would not result in any real likelihood of a significant effects on the environment.

While no particular lakes or rivers are identified by the appellant the FAC examined the proposal for possible impacts on water quality generally and noted the absence of any marked rivers or aquatic features in or adjoining the proposal according to EPA maps, the nature and scale of the proposal and the licence conditions. The DAFM also suggest that no watercourses are present on the site. The FAC concluded that based on the evidence available to it, there is no reason to consider that the proposal poses a significant risk to water quality.

In deciding to confirm the decision of the Minister to grant the Licence, 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,



Vincent Upton On Behalf of the Forestry Appeals Committee





FAC352/2019 TFL00274419 Drumming, Co. Longford

22nd September 2020

Before making its decision the Forestry Appeals Committee (FAC) undertook an appropriate assessment screening of the proposal in line with the Habitats Directive and examined the proposal from the perspective of the likelihood of significant effects on the environment. These considerations were based on information provided by parties to the appeal, including the original application, and available in the public domain. The FAC is satisfied that the information available to it is sufficient to undertake these considerations of the proposal.

The felling licence pertains to 5.09 ha of a second thinning of Sitka spruce and Japanese larch due for thinning in 2019. As it is a thinning there would be no clearfelling or replanting. Extraction routes and stacking areas are marked on harvesting maps provided with the application and the forest adjoins a minor public road. The site is described as flat to moderate and is not crossed or adjoined by an aquatic zone. The forest is located in Shannon (Upper) Subcatchment (26C 7) of the Upper Shannon Catchment and the closest marked stream lies 400m to the northeast.

#### **Appropriate Assessment Screening**

The proposal is for thinning in a managed forest and is not connected with or necessary to the management of any European site. There are eight sites whose boundaries fall within 15km of the proposal and these are listed below alongside the distance from the closest boundary to the centre of the proposal, and their qualifying interests and conservation objectives.

Mount Jessop Bog SAC and Brown Bog SAC lie 5.3km and 11.2km, respectively, to the northwest and there is no hydrological connection from the proposal to these sites and the degree of separation would preclude any other form of effects on these SACs and the related terrestrial habitats from occurring. The boundary of Lough Forbes Complex SAC lies 12.9km to the northwest. This SAC covers 1,333.8 ha and forestry is not listed amongst the most important threats or pressures in the Natura 2000 data form prepared by the NPWS. The stream some 400 metres to the northeast of the forest does eventually meet the SAC at a hydrological distance of approx. 20 km. While there is no record of a hydrological connection from the forest to this stream, the area is surrounded by agricultural fields and it is possible that drains are present. However, even in the presence of a drain connecting the forest and this stream, the proposal being for a thinning is not likely to generate significant amounts of runoff, such as sedimentation or nutrient enrichment, and such a drain would not have the capacity to transport significant runoff to the stream. Even were this to occur the hydrological distance of 20km would ensure extensive dilution and settling would occur. As a result there is no likelihood of significant effects on this SAC. There is no hydrological pathway for effects on the related Ballykenny-Fisherstown Bog SPA for the same reasons. The distance of over 12.9km and the unsuitability of the site would ensure that there is no likelihood of significant effects on this SPA and the related species. Ardagullion Bog SAC lies 13.7km to the northeast in a separate catchment and no pathway for effects occurs. Lough Ree SAC lies 13.9km to the southwest in a separate catchment and downstream from Lough Forbes and there is no pathway of effects on this SAC. There is also no hydrological connection with the related Lough Ree SPA, the

boundary of which is over 13.9km to the southwest, and the proposal area would not be considered to provide suitable habitat for the wetland and water birds associated with the SPA. Glen Lough lies at 8.8km to the east in a separate catchment and the proposal would occur in a semi-mature coniferous forest which would not be considered a suitable habitat for the related bird species. The absence of a connection and degree of separation results in no likelihood of significant effects on this SPA. Given the nature, scale and location of the proposal, the FAC concluded that significant effects on sites outside of a 15km radius would not be possible in this instance.

The proposal would occur within a semi-mature forest surrounded by agricultural land with existing access to the public road. The forests adjoins a larger block to the north and a licence for clearfell has been granted in 2020 (LD03-FL0084 on 17-Jul-2020 for 9.33 ha). There are no recent afforestation or road licences granted in the area. The area is rural and agricultural and there are few other permissions granted (two planning permissions to the east for a dwelling and septic tank and percolation system). Due to the absence of any pathway to a European site and the nature and scale of the proposal there is no likelihood of these other plans and projects resulting in an in-combination effect with the proposal. There are no licence conditions that relate to the mitigation of effects on a European site and none were considered in the screening.

Having regard to the nature, small scale and location of the proposal, its degree of separation from European sites and the conservation objectives of those sites, the FAC concluded that the proposal is not likely to have any significant effect on any European site, itself or in combination with other plans or projects.

Site Type	Site Code	Site Name	Distance To (m)	Qualifying Interests (* denotes a priority habitat)	Conservation Objectives	Assessment
SAC	002202	Mount Jessop Bog SAC	5292.58	<b>Habitats</b> 7120 Degraded raised bogs still capable of natural regeneration 91D0 Bog woodland*	<a href="http://www.npws.ie/sites/default/files/protected-sites/conservation-objectives/CO002202.pdf">http://www.npws.ie/sites/default/files/protected-sites/conservation-objectives/CO002202.pdf</a>	No likelihood of significant effects
SAC	002346	Brown Bog SAC	11200.41	<b>Habitats</b> 7110 Active raised bogs* 7120 Degraded raised bogs still capable of natural regeneration 7150 Depressions on peat substrates of the Rhynchosporion	<a href="http://www.npws.ie/sites/default/files/protected-sites/conservation-objectives/CO002346.pdf">http://www.npws.ie/sites/default/files/protected-sites/conservation-objectives/CO002346.pdf</a>	No likelihood of significant effects
SAC	001818	Lough Forbes Complex SAC	12930.93	<b>Habitats</b> 3150 Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation 7110 Active raised bogs* 7120 Degraded raised bogs still capable of natural regeneration 7150 Depressions on peat substrates of the Rhynchosporion 91E0 Alluvial forests with Alnus	<a href="http://www.npws.ie/sites/default/files/protected-sites/conservation-objectives/CO001818.pdf">http://www.npws.ie/sites/default/files/protected-sites/conservation-objectives/CO001818.pdf</a>	No likelihood of significant effects

				glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae)*		
SAC	00234 1	Ardagullion Bog SAC	13682.42	<b>Habitats</b> 7110 Active raised bogs* 7120 Degraded raised bogs still capable of natural regeneration 7150 Depressions on peat substrates of the Rhynchosporion	<a href="http://www.npws.ie/sites/default/files/p/protected-sites/conservation/objectives/CO002341.pdf">http://www.npws.ie/sites/default/files/p/protected-sites/conservation/objectives/CO002341.pdf</a>	No likelihood of significant effects
SAC	00044 0	Lough Ree SAC	13880.37	<b>Habitats</b> 3150 Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation 6210 Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (* important orchid sites) 7110 Active raised bogs* 7120 Degraded raised bogs still capable of natural regeneration 7230 Alkaline fens 8240 Limestone pavements* 91A0 Old sessile oak woods with Ilex and Blechnum in the British Isles 91D0 Bog woodland* <b>Species</b> 1355 Otter ( <i>Lutra lutra</i> )	<a href="http://www.npws.ie/sites/default/files/p/protected-sites/conservation/objectives/CO000440.pdf">http://www.npws.ie/sites/default/files/p/protected-sites/conservation/objectives/CO000440.pdf</a>	No likelihood of significant effects
SPA	00404 5	Glen Lough SPA	8773.88	<b>Birds</b> A038 Whooper Swan ( <i>Cygnus cygnus</i> )	<a href="http://www.npws.ie/sites/default/files/p/protected-sites/conservation/objectives/CO004045.pdf">http://www.npws.ie/sites/default/files/p/protected-sites/conservation/objectives/CO004045.pdf</a>	No likelihood of significant effects
SPA	00410 1	Ballykenny-Fisherstown Bog SPA	12924.53	<b>Birds</b> A395 Greenland White-fronted Goose ( <i>Anser albifrons flavirostris</i> )	<a href="http://www.npws.ie/sites/default/files/p/protected-sites/conservation/objectives/CO004101.pdf">http://www.npws.ie/sites/default/files/p/protected-sites/conservation/objectives/CO004101.pdf</a>	No likelihood of significant effects
SPA	00406 4	Lough Ree SPA	13901.70	<b>Birds</b> A038 Whooper Swan ( <i>Cygnus cygnus</i> ) A056 Shoveler ( <i>Anas clypeata</i> ) A067 Goldeneye ( <i>Bucephala clangula</i> ) A050 Wigeon ( <i>Anas penelope</i> ) A142 Lapwing ( <i>Vanellus vanellus</i> ) A193 Common Tern ( <i>Sterna hirundo</i> ) A065 Common Scoter ( <i>Melanitta nigra</i> ) A125 Coot ( <i>Fulica atra</i> ) A052 Teal ( <i>Anas crecca</i> ) A004 Little Grebe ( <i>Tachybaptus ruficollis</i> ) A053 Mallard ( <i>Anas platyrhynchos</i> ) A061 Tufted Duck ( <i>Aythya fuligula</i> ) A140 Golden Plover ( <i>Pluvialis apricaria</i> ) <b>Habitats</b> Wetlands	<a href="http://www.npws.ie/sites/default/files/p/protected-sites/conservation/objectives/CO004064.pdf">http://www.npws.ie/sites/default/files/p/protected-sites/conservation/objectives/CO004064.pdf</a>	No likelihood of significant effects

## **Examination of Environmental Impacts**

The EU Directive sets out, in Annex I a list of projects for which EIA is mandatory. Annex II contains a list of projects for which member states must determine through thresholds or on a case by case basis (or both) whether or not EIA is required. Neither afforestation nor deforestation are referred to in Annex I. 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 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. The felling of trees, 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 of a small scale and a thinning, without the clearance of land, which would be normal activities in a managed forest and would be carried out under licence and with conditions to adhere to a series of requirements and guidelines. No clearfelling or replanting is proposed. The forest is situated in an agricultural and rural landscape and such activities would not be out of keeping with the area. There is a dwelling to the east but at a remove and existing access to a minor public road to the south is provided. Traffic and noise will likely increase during operations but this would be of a limited nature and timescale and would not be out of keeping with other management practices in the area. There are a number of conditions related to the protection of biodiversity and water quality on the licence and, taking account of the scale and nature of the proposal and noting the absence of marked watercourses adjacent to the site, the proposal is not considered likely to result in a significant impact on water quality or biodiversity. There are no nature conservation areas in the vicinity and the FAC concluded that there is no likelihood of a significant effect on any European site. There are conditions on the licence regarding the management of operations that mean that the occurrence of waste and pollution of a significant degree are not likely. There are no recorded monuments in the site while some are adjacent to the site and there are conditions attached to the licence to control operations in this area and the FAC is satisfied that these are acceptable to protect the monuments. The FAC does not consider that the proposal falls within the classes included in the Annexes of the EIA Directive or considered for EIA in Irish Regulations and does not consider that it would result in any real likelihood of a significant effect on the environment.

Vincent Upton  
On Behalf of the Forestry Appeals Committee