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29th March 2021

Subject: Appeal FAC032/2020 in relation to felling licence TFL00323319

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

Felling licence TFL00323319 was issued by the Department of Agriculture, Food and the Marine (DAFM) on the 19th December 2019.

Hearing

An oral hearing of appeals FAC032/2020 was held by the FAC on the 2nd March 2021.

FAC: Mr Des Johnson (Chairperson), Mr Pat Coman, Mr Dan Molloy & Mr Luke Sweetman
Secretary to the FAC: Mr Michael Ryan
Appellant: [REDACTED]
Applicant's Representative: [REDACTED]
DAFM representatives: Ms Eilish Kehoe, Mr Momme Reibisch

Decision

The FAC considered all of the documentation on the file, including application details, processing of the application by the DAFM, the grounds of appeal, submissions made at the Oral Hearing and all other submissions, before deciding to affirm the decision to grant felling licence TFL00323319.

This licence is for the thinning and subsequent clearfelling and replanting of 14.99ha in Corbally and Slieve, Co. Roscommon. The application site is across seven plots composed of a range of species; Sitka spruce, Norway spruce, Lodgepole pine and Ash. The licence details the schedule of thinning interventions (2019 & 2024) and clearfell operations planned (2024 & 2028) for the various plots. The proposed restock species is 90% Sitka spruce and 10% Additional Broadleaves across all plots. The National Soils layer on the Environmental Protection Agency (EPA) website indicates the underlying soil type is cutaway/cutover Peat with some areas of Peaty Gleys. The slope is predominantly flat to moderate (<15%). The project site is bordered to the north by an unnamed watercourse which flows c.1.1km to the River Suck and a number of relevant watercourses (RWCs) and drains run throughout the site. The proposal is in the Upper Shannon Catchment, the Suck_SC_030 Sub-Catchment and the Suck_060 River Sub-Basin. The Suck_060 Waterbody was assigned 'Good' status and deemed to be 'Not at Risk' by the EPA during the 2013-2018 reporting period.

The applicant submitted a felling licence application with a Harvest Plan and associated maps. In completing a desk-assessment of the licence application, the DAFM carried out a Stage 1 Appropriate Assessment (AA) screening that considered 14 Natura 2000 sites within 15km of the proposal. All of these Natura sites were screened out for Stage 2 AA for the following reasons:

- **Aughrim (Aghrane) Bog SAC, Ballinturly Turlough SAC, Ballygar (Aghrane) Bog SAC, Camderry Bog SAC, Corliskea/Trien/Cloonfelliv Bog SAC, Croaghill Turlough SAC, Kilsallagh Bog SAC, Lisnageeragh Bog and Ballinastack Turlough SAC, Lough Lurgeen Bog/Glenamaddy Turlough SAC, Mullygollan Turlough SAC:**
 - The position of the project area downstream from the Natura site, and the subsequent lack of any hydrological connection.
- **Bellanagare Bog SAC, Cloonchambers Bog SAC:**
 - The position of the project area downstream from the Natura site, and the subsequent lack of any hydrological connection.
 - The unsuitability of the project area for use by any species listed as a qualifying interest of the Natura site.
- **Bellanagare Bog SPA:**
 - Due to specific listed reasons related to the Greenland White-fronted Goose
- **River Suck Callows SPA:**
 - Other factors, Screened out due to distance from Natura site

The DAFM considered the potential for the proposed development to contribute to an in-combination impact on Natura sites. They consulted various planning websites along with their own records for both forestry and non-forestry plans and projects in the general vicinity of the Corbally and Slieve Townland. The DAFM concluded that the proposal, when considered in combination with other plans and projects, would not give rise to the possibility of a significant effect on any Natura site.

The DAFM referred the application to the Roscommon County Council and the National Parks & Wildlife Service (NPWS). The County Council responded on the 30th April 2019 referencing the requirements of the Water Framework Directive (WFD), describing the hydrological features on and around the site and making a number of recommendations relating to water protection measures.

The licence issued on the 19th December 2019 and is subject to relatively standard conditions (a) to (g) plus (h) i) Standards for Felling and Reforestation 2019 to apply ii) adhere to Forestry & Water Quality Guidelines iii) All guidelines to apply.

There is one appeal against the licence. The written grounds of appeal were considered in full by the FAC, the following is a summary of the issues raised:

- The Forest Service identified Natura 2000 sites within 15kms of the project site. This is the trigger for AA.
- There is no evidence to support the Inspector's assessment in respect of AA.
- The Inspector identifies the Natura 2000 site as being in a different catchment to the project lands but does not identify the catchment. In this case the only legal answer is screening in for Appropriate Assessment
- Mitigation measures cannot be taken into consideration in screening for AA. Forest Service safeguards are mitigation measures
- It is only necessary to show that there is the possibility of an effect to trigger Appropriate Assessment.

The DAFM submitted a response to the grounds of appeal in a written statement to the FAC:

The AA screening procedure relevant at the time was applied. There are two Natura sites within c.6.1 km of the proposal. Both Natura sites are upstream of the project area and therefore there can and will be

no impact. The proposal would be screened out using the Habitat Table 18Dec19 and the Bird Foraging Table 06Jan20. In combination assessment was carried out. All relevant information can be found on file.

The FAC held an Oral Hearing on the 2nd March 2021. The FAC sat remotely, the appellant did not participate and the applicant's representative (AR) and the DAFM participated remotely. The DAFM outlined the background to their decision to issue the felling licence and confirmed that an in-combination assessment had been carried out and stated that, if this application was assessed using current habitat and bird species table screen-out rules, their decision to screen-out for Stage 2 AA would be unchanged. The AR stated that his predecessor had submitted the application but that it was in line with the rules at the time. The DAFM confirmed that the date of the District Inspector (DI) certification of approval was 27th December 2019. Addressing FAC queries about the Inspector's Certification document, the DAFM stated that the proposal was classified as being in an area of high amenity value based on the iFORIS landscape layer and this had triggered the referral to the Local Authority. The AA screening doesn't display the relevant Qualifying Interest data for certain Natura sites listed but that links to the NPWS data were there instead and that this was a technical issue in iFORIS. The figures for the percentage of digitised forest area within 5km under licence are accurate. The FAC queried the lack of information on the areas and lengths for the forestry projects included in the in-combination document. The DI stated that the in-combination report was completed centrally in Johnstown Castle and that he could not say if the area and lengths were fully considered but that he focussed on the in-combination conclusion in making his decision to approve the application. Responding to FAC questions, the AR stated that timber bridges would be used to cross watercourses and site-specific plans for managing water on site would change with the weather conditions and are time and site-specific. The DAFM highlighted that the Harvest Plan addressed the management of watercourses and setbacks.

The FAC queried the DAFM in relation to the grounds of appeal regarding the DI's answers to specific questions. The DI stated that the only referral response was from the County Council and this had been considered and that the NPWS data for the relevant Natura sites was considered and allowed him to come to an AA screening conclusion and that the reasons for screening sites out were stated. The FAC noted that the County Council had made a number of recommendations related to the protection of water quality and queried were any of the conditions on the licence mitigation measures in relation to Natura sites. The DAFM stated that there were no mitigation measures as all Natura sites had been screened out and that adherence to prescribed standards and the measures included in the Harvest Plan addresses the issue of protecting water quality. They stated there is SPA downstream but that it is a

considerable distance away. The AR stated they had no additional remarks other than to state they are very cognisant of complying with the prescribed conditions and requirements of the licence.

In addressing the grounds of appeal, the FAC had regard to the contention that the DAFM had identified Natura sites within 15km of the application site and that this should trigger Stage 2 AA. The FAC noted that the DAFM completed a Stage 1 AA screening in line with the requirements of the EU Habitats Directive and considered the potential for the proposed development to have a significant effect on Natura sites within a 15km radius. The FAC considers that there is no convincing evidence that this radius should be increased in this case. The DAFM identified 14 Natura sites within this distance and all of these sites were screened out for Stage 2 AA with the reasons for doing so provided. The DAFM considered the proposal's potential to contribute to a cumulative effect on Natura 2000 sites and concluded that the licenced project, in combination with other plans and projects, would not give rise to the possibility of a significant effect on any Natura site. The FAC noted that the application site is in the Suck_SC_030 Sub-Catchment and that there are no SACs or SPAs within this particular Sub-Catchment. The FAC considers that the licence conditions which prescribe adherence to DAFM standards, requirements and guidelines were attached in order to reflect the concerns of the Local Authority and for the reason of complying with good forest practice and that, in the particular circumstances of this case, these do not constitute mitigation measures for the protection of Natura 2000 sites. Based on the evidence before it, the FAC considers that there is no convincing reason to disagree with the conclusion reached by the DAFM in their AA screening and does not consider the completion of a Stage 2 AA necessary in this instance.

Based on the information before it, the FAC is satisfied that the DAFM did not make a serious or significant error, or series of errors, and complied with fair procedures, in reaching their decision to issue felling licence TFL00323319. In deciding to affirm the decision of the Minister, the FAC considers that the proposed development would be consistent with Government Policy and good forestry practice.

Yours sincerely,

A large black rectangular redaction box covering the signature of the official.

Luke Sweetman on Behalf of the Forestry Appeals Committee

