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12th February 2021

Subject: Appeal FAC 243/2020 in relation to licence GY16-FL0093

Dear [REDACTED]

I refer to the appeal to the Forestry Appeals Committee (FAC) in relation to the above licence issued by Department of Agriculture, Food and 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 the parties to the appeal.

Background

Licence GY16-FL0093 for felling and replanting of 12.71 hectares at Bellayarha South and Cahernagarry, Co. Galway was granted by the DAFM on 1st May 2020.

Hearing

An oral hearing of appeal FAC 243/2020, of which all parties were notified, was held by the FAC on 6th January 2021. In attendance:

FAC Members:	Mr. John Evans (Deputy Chairperson), Mr. Vincent Upton, Mr. Seamus Neely & Mr. James Conway
Appellant:	[REDACTED]
Applicant / Representative(s):	[REDACTED]
Department Representative(s):	Mr. Luke Middleton & Ms. Eilish Keogh
Secretary to the FAC:	Ms. Marie Dobbyn

Decision

Having regard to the evidence before it, including the record of the decision by the DAFM, the notice of appeal, submissions at the oral hearing, the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister to grant this licence GY16-FL0093.

The licence pertains to the felling and replanting of an area of 12.71 hectares at Bellayarha South and Cahernagarry, Co. Galway. The forest is currently composed of Sitka Spruce and Lodgepole Pine and replanting is to be of Lodgepole Pine (70%) and Sitka Spruce (30%) with 5% open space. As per the DAFM documentation, the site's underlying soil type is Basin Peat, Blanket Peat (100%), the slope is moderate 0-15%, the habitat is predominantly coniferous forest (WD4) and the project is located in the Leecarrow Stream_010 (100%) River Sub Basin.

The applicant's application pack included maps, inventory data, a harvest plan and an Appropriate Assessment pre-screening report. The DAFM referred the proposal to Galway County Council, however no response is on file. The DAFM undertook and documented an Appropriate Assessment screening dated 30th April 2020, that identified seven European sites within 15km and that there was no reason to extend this radius in this case. The screening determined that an Appropriate Assessment was not required, giving reasons for screening out each of the sites. The proposal's potential to contribute to in-combination effects on European sites was also considered with other plans and projects in the vicinity of the site listed. The licence issued on 1st May 2020 with conditions attached.

The decision to grant the Licence is subject to one appeal. The grounds of the appeal broadly are;

- Breach of Article 4(3) of the EIA Directive 2014/52/EU through failure to take to carry out screening for EIA.
- Breach of Article 4(4) of the EIA Directive 2014/52/EU through failure to describe aspects of the environment likely to be significantly affected by the project.
- Breach of Article 4(4) of the EIA Directive 2014/52/EU through failure to consider all projects in a Coillte Forest Management Unit as a single project.
- Inadequate consideration of the Water Framework Directive River Basin Management Plan. Clear felling has the capacity to impact on water quality, especially as the site is on a peat soil. This site is in the catchment of the Lecarrow Stream 010 which is in the St Clerans Stream priority Area For Action under the WFD River Basin Management Plan. The current status of this waterbody is 'Good' but it is listed as being for 'At Risk'. The Groundwater Status is also deemed to be 'At Risk'. No evidence has been provided to me that relevant prescribed bodies have been consulted. In the absence of adequate consultation the achievement of the 'good ecological status' recovery objective set for the underlining waterbody or waterbodies under the WFD River Basin Management Plan cannot be assured.
- Appropriate Assessment (AA) screening conclusion is flawed. This application has been screened out from Stage 2 AA on the basis of the *'expert opinion and the rationale presented in Pre-Screening Report'* by Coillte. This report states that *'The harvest block is not located within a water basin that has hydrological connectivity to an aquatic SAC. Rahasane Turlough SAC, which is downstream of the project site, is an aquatic SAC within the same catchment (Kilcolgan) as the project. The Stage 1 screening conclusion is based on the acceptance by DAFM of the pre-screening assessment by Coillte. The screening conclusion, by adopting the pre-screening report has not considered the potential hydrological connectivity between the project site and the SAC. On the basis of the Stage 1 AA it cannot be excluded, on the basis of objective information, that the project will have a significant effect on the site and Stage 2 AA is required.*
- Licence conditions that do not provide a system of protection for wild birds during the period of breeding and rearing consistent with the requirements of Article 5 of the Birds Directive.
- That the licence should include stringent and enforceable conditions regarding notification to appropriate bodies, groups and the public concerned in the case of any spraying of chemicals.

In a statement to the FAC, the DAFM submitted that their decision was issued in accordance with their procedures, Statutory Instrument 191/2017 and the 2014 Forestry Act, and provided responses to each

of the grounds of appeal and at oral hearing provided clarifications regarding the entries at numbers 8 and 9 in the Statement of Facts provided by DAFM to the FAC wherein it states;

- *“8) The AA screening report was completed by the Inspector and contains recommendations regarding screened European Sites. A number of the SCIs/QIs were truncated on the AA Screening form for project XXXXX when outputting the form related to the screening exercise. However, all SCIs/QIs were considered during the screening exercise itself and the screening determination is considered sound. A revised AA screening form which includes all SCIs/QIs of the screened European Sites,”* and
- *“9) For consideration of in-combination effects of the proposed project, DAFM relied exclusively on Coillte’s in-combination statement. DAFM subsequently carried out a separate in-combination assessment and included an associated in-combination statement based on this information which is consistent with the licensee’s in-combination statement.”*

At the oral hearing, DAFM summarised their approach to processing the application and issuing the licence, giving their reasons for any non-standard conditions attached to the licence. The appellant contextualised his grounds of appeal and outlined his rationale for some of the grounds. The appellant highlighted the submission by the applicant of three AA pre-screening reports and asserted that the initial one is flawed, and questioned when the other two were submitted and the reasons for the third submission, pointing to what he contended were significant changes between them. The appellant also highlighted that two AA screening reports by DAFM were both dated 30th April 2020, the day prior to the issuing of the licence and contended that the applicant’s pre-screening conclusions amount to an AA rather than a screening and that the DAFM screened out on the basis of the applicant’s opinion. The appellant also claimed that there was no specific licence condition regarding water quality of the group water scheme or Rahasane Turlough. The applicant provided information on the site, and its environs, that a site inspection found a relevant stagnant watercourse on site at the eastern edge that enters a drain at the adjoining public road which joins the Lecarrow Stream flowing 11.4km to Toberdoney River and flows another 3.9km to Rahasane Turlough meaning the site is 15.3km hydrologically distant from the nearest hydrologically connected European site, Rahasane Turlough SAC and SPA. The applicant stated that the third AA pre-screening report was submitted by mistake, and that they are committed to what is in the second submitted version of the AA pre-screening report, that no fertiliser application was proposed in either and that there is one potential hydrological connection from the site. The DAFM in responses stated that there was an error in their statement to the FAC that DAFM relied exclusively on the applicant’s in-combination statement, and that in fact they relied on their own in-combination assessment in their statement. The DAFM further stated that when they were updating their AA screening to correct the truncation of qualifying interests in their original AA screening they had used an updated template which follows a different structure but contains identical contents save for the correction of the truncated qualifying interests. The DAFM also clarified some timings regarding the documentation and that they didn’t take the third AA pre-screening report submitted by the applicant into consideration.

In addressing the grounds of appeal, the FAC considered, in the first instance, the contention that the proposed development should have been addressed in the context of the EIA Directive. In its statement

to the FAC, the DAFM submitted that the standard operational activities of clear-felling and replanting already established forests areas are not included under the specified categories of forestry activities or projects for which screening for EIA is required as set out in Schedule 5 Part 2 of the Planning and Development Regulations 2001, as amended, and in Regulation 13(2) of the Forestry Regulations 2017. The DAFM contended that screening for EIA was not required in this case and that breaches of Article 4(3) and 4(4) had not occurred. At the oral hearing the DAFM reasserted its contention that the proposal does not include a class of project covered by the EIA Directive or by National legislation.

In considering this aspect, the FAC notes that the EU EIA 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 is 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 Forestry Act 2014 defines a forest as land under trees with a minimum area of 0.1 ha and tree crown cover of more than twenty per cent of the total area or the potential to achieve this cover at maturity. The decision under appeal relates to a licence for the felling and replanting of an area of 12.71 hectares. The FAC does not consider that the proposal comprises deforestation for the purposes of land use change and neither that it falls within the classes included in the Annexes of the EIA Directive or considered for EIA in Irish Regulations. Therefore the FAC agrees that screening for EIA was not required in this case and that breaches of Article 4(3) and 4(4) had not occurred.

The FAC considered the contention in the grounds of appeal that in granting the licence DAFM had taken inadequate consideration of the objectives of the WFD River Basin Management Plan. In doing so, the FAC noted the content of the DAFM statement, which outlines the checks and balances applied during the evaluation of felling licence applications, in relation to the protection of water, as set out in the DAFM document *Forests & Water: Achieving Objectives under Ireland's River Basin Management Plan 2018-2021* (2018). The FAC also considered that the licence includes a condition that requires that all felling and planting adheres to the *Forestry & Water Quality* document along with a number of other Guidance and Standards documents published by the Department, and in addition includes a condition that refers to a specific section of the *Forestry & Water Quality Guidelines* in regard to planting in an aquatic buffer zone. The FAC reviewed EPA maps and data and find the proposal area is in the Kilcolgan_Sub catchment_010 and Galway Bay South East WFD_Catchment and the river waterbody Lecarrow Stream_010 which has a good WFD status (2013-2018). A water drain along the south east boundary of the site and adjoining the public road, extends for c.170 meters beyond the site to join the Lecarrow Stream. DAFM referred the proposal to Galway County Council, but DAFM outlined that no

response was received. The FAC observes that Lecarrow Stream is recorded by the EPA as having had a 'Good' status in the 2013-2018 WFD monitoring cycle and is projected under the WFD 3rd cycle as 'Not at Risk'. The FAC also notes that ground waterbody, IE_WE_G_0100, is recorded by the EPA as having a 'Good' status in the 2013-2018 WFD monitoring cycle, and that the appellant's contention is correct that IE_WE_G_0100 is projected under the WFD 3rd cycle as 'At Risk'. Pressures identified by the EPA for this ground waterbody (IE_WE_G_0100) include Agricultural and Domestic Wastewater, while Forestry is not noted as a pressure. The applicant at the oral hearing advised that no fertiliser application was proposed and the slope on the site is found to be moderate (0-15%). The proposal area is not identified on EPA maps as being part of a Group Scheme Source Protection Area, although the Lecarrow Stream_010 is identified as being so. In summary based on the information available to it and having regard to the scale, nature and location and the conditions under which operations would be undertaken, the FAC is not satisfied that the proposal poses a significant threat to water quality.

The grounds of the appeal submitted also contended that that the Stage 1 AA conclusion is flawed as it relied on an inadequate pre-screening report. The applicant submitted three pre-screening reports, one with the application on 2nd December 2019, a second one dated 29th April 2020, which they indicated was submitted to update the process, and a third one dated 7th May 2020, which was after the date the licence was issued. The DAFM at the oral hearing stated that it was the second pre-screening report dated 29th April 2020 that they had regard to in their AA screening. The FAC finds this pre-screening report gives some additional details on operations, the rationale for screening out the seven relevant European Sites it identified, references to further forestry projects in the vicinity of the site and the cumulative impact on river water bodies and its conclusion that the project did not need to go for AA. The FAC finds the first pre-screening report stated that *"the harvest block is not located within a water basin that has hydrological connectivity to an aquatic SAC"* and agrees that this is incorrect and finds the second pre-screening report in assessing effects on European sites states with regard to Rahasane Turlough SAC that it is at a hydrological distance of 16.5km. This pre-screening report contends that the project can be screened out and does not need to go to Stage 2 AA.

The DAFM, in this case, undertook their own Stage 1 screening, and found seven European sites within 15 km of the proposal area, and that there was no reason to extend the zone of influence in this case. The sites identified were Lough Rea SAC, Sonnagh Bog SAC, Lough Corrib SAC, Rahasane Turlough SAC, Lough Rea SPA, Slieve Aughty Mountains SPA and Rahasane Turlough SPA. The FAC consulted publicly available information from the NPWS and EPA and identified the same seven sites. The DAFM considered each site in turn and listed the associated qualifying interests and conservation objectives and the reasons for their screening conclusions. DAFM's reasons for screening out the different sites were site dependant, including reasons such as due to the separation distance between the Natura site and the project, the absence of a direct upstream hydrological connection, and location of the project in a separate waterbody to that containing the Natura site. For the Rahasane Turlough SAC though DAFM's reason given was *"having considered the expert opinion and the rationale in the pre-screening report (regarding hydrological distance, project area, soil type and depth, site slope and project separation distance) submitted by the applicant in respect of the proposed"*. Accepting DAFM's contention that it was the applicant's pre-screening report of 29th April 2020 that they had regard to, the FAC find that this

pre-screening report set out the following rationale for screening out Rahasane Turlough SAC *"...a hydrological distance of 16.5km, a project area of 12.71 hectares, a soil type of deep peat, a gentle slope, and a separation distance of greater than 100m, the Turloughs, no modification to existing drainage network, forest operations contained within the project area, in our expert opinion there is no possibility for significant effect."* The FAC noted that the Rahasane Turlough SAC is situated in a separate subcatchment to the proposed felling and that data published by the Geological Survey of Ireland show no karst features in or around the felling site, that there are no traced underground hydrological connections in the general area, and that the forest land is situated on a separate geological bedrock from the SAC. The FAC finds while the hydrological distance quoted at the oral hearing was 15.3km, it is not substantially different to that identified in the applicant's pre-screening report and is still a significant distance and having considered all evidence it does not find that the DAFM erred in screening out this site.

The DAFM also undertook and recorded a consideration of other plans and projects, including forestry and non-forestry projects, and they concluded that the project, when considered in combination with other plans and projects, will not give rise to the possibility of a significant effect on any Natura site. In their statement to the FAC, they stated *"For consideration of in-combination effects of the proposed project, DAFM relied exclusively on Coillte's in-combination statement. DAFM subsequently carried out a separate in-combination assessment and included an associated in-combination statement based on this information which is consistent with the licensee's in-combination statement."* At the oral hearing the DAFM claimed there was an error in their statement to the FAC with regard to this and rather that they relied on their own in-combination assessment and which they stated was conducted prior to their decision to issue the licence. The FAC considered this and reviewed the DAFM's in-combination report which states they reviewed a number of websites on the week of 1st May 2020, listing planning entries to Galway County Council and An Bord Pleanála and extracts from the Galway County Development Plan 2015-2021, and other forestry projects in the general vicinity of the project. The FAC finds the 1st May was a Friday and that this was the day the licence issued also. The FAC finds that the DAFM in-combination report contains a greater number of forestry and non forestry projects than the applicant's in-combination assessment in their pre-screening report of 29th April 2020 and in other alliterations and therefore there was not reliance on the applicant's in-combination statement. The FAC having considered all of this, consider the procedures adopted by the DAFM in their assessment are acceptable and the FAC is not satisfied that a serious or significant error or series of errors was made in the making of the decision regarding AA and concurs with the conclusions provided.

In relation to the appellant's stated ground of appeal that the licence conditions do not provide a system of protection for wild birds during the period of breeding and rearing consistent with the requirements of the Birds Directive. The FAC had regard to the DAFM statement and note that the granting of a felling licence does not exempt the holder from meeting any legal requirements set out in any other statute. The FAC noted that the appellant did not submit any specific details in relation to bird nesting or rearing on the proposed site. Based on the evidence before it, the FAC concluded that additional conditions of the nature described by the appellant should not be attached to the licence.

In relation to the appellant's grounds that the licence should include stringent and enforceable conditions regarding notification to appropriate bodies, groups and the public concerned in the case of any spraying of chemicals, the DAFM in their statement outlined that the use of plant protection products (PPPs) in Ireland, is governed by Statutory Instrument 155 of 2012 and Statutory Instrument 159 of 2012, which give effect to EU legislation on PPPs and that users of PPPs shall apply the principles of Good Plant Protection Practice (GPPP), as provided for in S.I. 155 of 2012. In addition, they set out that there is no legal requirement for forest owners to inform adjacent land owners of their intention to spray, and gave reassurances as to the use of the PPP approved for use. Based on the information available to it, the FAC is satisfied that licence conditions as proposed by the appellant are not required in this case.

In considering the appeal the FAC had regard to the record of the decision, the submitted grounds of appeal and submissions received including at the oral hearing. The FAC is not satisfied that a serious or significant error or a series of errors was made in making the decision or that the decision was made without complying with fair procedure. The FAC in deciding to affirm the decision, considered that the proposed development would be consistent with Government policy and Good Forestry Practice.

Yours sincerely,

A black rectangular redaction box covering the signature of James Conway.

James Conway, On Behalf of the Forestry Appeals Committee