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12<sup>th</sup> February 2021

**Subject:** Appeal FAC229/2020 in relation to licence RN11-FL0030

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 RN11-FL0030 for felling of 6.71 hectares at Bracklin, Cornaveagh, Dunamon, Co. Roscommon granted by the DAFM on 30th April 2020.

#### **Hearing**

An oral hearing of appeal FAC229/2020, of which all parties were notified, was held by the FAC on 5<sup>th</sup> February 2021. In attendance:

FAC Members:	Mr. Donal Maguire (Deputy Chairperson), Mr. Derek Daly, Mr. Vincent Upton
Appellant:	[REDACTED]
Applicant / Representative(s):	[REDACTED]
Department Representative(s):	Mr. Anthony Dunbar & Ms. Eilish Keogh
Secretary to the FAC:	Ms. Marie Dobbyn
Observer(s):	[REDACTED]

#### **Decision**

Having regard to the evidence before it, including the record of the decision by the DAFM, the notice of appeal, and submissions received including those at the oral hearing, the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister to grant the licence RN11-FL0030.

The licence pertains to the felling of 6.71 ha at Bracklin, Cornaveagh, Dunamon, Co. Roscommon. The forest is comprised of Sitka spruce, lodgepole pine with smaller areas birch and ash. The application included inventory, restocking, environmental information, a harvest plan including operational and environmental rules and maps. The application proposes replanting with Sitka spruce with 0.34 ha

retained as open space. The application was referred to Roscommon County Council who responded regarding obligations in relation to the Water Framework Directive and noted that the area is within the 26D Upper Shannon catchment and the Suck 070 waterbody catchment which has a Good status and is not at risk and not in a priority area for action. The response goes on to submit that an EPA lake is liable to flooding and outlines measures to be put in place during operations. The DAFM undertook a screening for Appropriate Assessment and identified fourteen European sites within 15km of the proposal. Each site is considered in turn and its qualifying interests and special conservation interests are listed and reasons for screening each out are provided. The DAFM also recorded a consideration of other plans and projects in combination with the proposed felling. A decision to approve was made on 30th April 2020.

There is one appeal against the decision. The grounds submit that there has been a breach of Article 4(3) and 4(4) of the EIA Directive 2014/52/EU in that a screening for EIA has not been carried out and that the developer has not submitted a description of the aspects of the environment likely to be significantly affected by the project. That there has been inadequate consideration of the objectives of the WFD River Basin Management Plan in relation to the Suck and the associated catchment and groundwater and that the relevant prescribed bodies have not been consulted. That the AA screening is flawed in relation to the River Suck Callows SPA, that forestry is identified by the NPWS as pressure on the SPA, that foraging distance in itself is not sufficient reason for screening and that the standards employed by the DAFM are not sufficiently clear. A number of grounds relate to licence conditions, stating that condition j is contradictory, that they do not provide a system of protection for wild birds and that they should include requirements regarding notification in relation to the spraying of chemicals. It is submitted that the licence involves the replacement of broadleaf tree cover with conifers and that there has been a breach of Article 10(3) of Forestry Regulations in relation to the inspection of the file by the appellant.

The FAC sought additional information from the Appellant regarding the suggested breach of the EIA Directive and the class of development to which the Appellant considers the licence pertains. The Appellant provided a response to the request but did not state which class of project listed in either Annex I or II of the EIA Directive they considered the licenced activity to fall within.

In a written response to the FAC, the DAFM submitted that it is satisfied that the decision was made following their procedures. It is 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. The statement submits that the DAFM applies a wide range of checks and balances during its evaluation of felling licence applications in relation to the protection of water and that any felling licence issued is conditional on adherence to the Interim Standards for Felling and Reforestation, which set out a wide range of operational measures to prevent direct and indirect impact on water quality arising from the operation. It is submitted that referrals to

statutory consultees are undertaken on an automatic basis following certain spatial rules or on a discretionary basis. In this instance the application was referred to Roscommon County Council.

In relation to Appropriate Assessment, the DAFM submit that the application had been subject to the DAFM's AA Screening procedure, as set out in the document entitled Appropriate Assessment Procedure: Guidance Note & iFORIS SOP for DAFM Forestry Inspectors and that the rationale for the screening decision was recorded. It is submitted that condition (j) reflects the Code of Best Forest Practice and Forestry and Landscape Guidelines. Regarding licence conditions the DAFM submitted that it is "a principle of law that unless the grant of a first statutory licence, permit, permission, lease or consent, expressly exempts the holder thereof of any obligation to obtain a second licence, permit, permission, lease or consent required or to adhere to any other restrictions on the timing of activities or similar where such is set out by statute elsewhere, those other obligations and restrictions apply." In response to the suggested breach of Regulation 10(3), the DAFM referred to a request from the Appellant for documentation on 451 applications and that the Appellant had appealed the licence in question. The DAFM further submitted that during the recording of the appropriate assessment screening that some qualifying interests/special conservation interests had been truncated on the recorded form and that a revised full form was also submitted. The DAFM submitted that the use of plant protection products (PPPs) in Ireland, is governed by Statutory Instrument 155 of 2012 and Statutory Instrument 159 of 2012. Both of these S.I.s are based on, and give effect to, EU legislation on PPPs - respectively Directive 2009/128/EC (concerning the sustainable use of pesticides) and Regulation (EC) No 1107/2009 (concerning the placing of plant protection products on the market) and that users of PPPs shall apply the principles of Good Plant Protection Practice (GPPP), as provided for in S.I. 155 of 2012. It is submitted that there is no legal requirement for forest owners to inform adjacent land owners and that the PPE is used in a targeted way. It is submitted that the replanting species proposed by the Applicant was considered by DAFM and deemed as consistent with felling and reforestation policy.

An oral hearing of the appeal was held and attended by the Appellant and representatives of the DAFM and the Applicant. The DAFM outlined the application that was made and their processing of the application including referencing the spatial layers and other data employed for this purpose. They outlined their Appropriate Assessment screening and submitted that it was carried out in line with their procedures and that they were satisfied with their decision. They submitted that the proposal would not involve deforestation and would not fall within a class of development covered by the EU EIA Directive. The Appellant submitted that the proposal would pose a risk to water quality and that this could impact on the conservation objectives of the River Suck Callows SPA and that the NPWS website identifies forestry as a risk. They submitted that there was a threat to groundwater and that the Standards that are conditions on the licence are not sufficiently clear. They submitted that they may have mis-read the status of the waterbody. They submitted that another application two townlands away had been screened in for Appropriate Assessment. The Applicant outlined the details of the application they made. They submitted that the site is flat to gently sloped on a peat soil. They submitted that there is a waterbody to the north and west of the forest and that there are existing broadleaf trees bordering it which would not be felled and the land adjoining the waterbody would not be entered. They submitted that this waterbody flows easterly and enters a lake that outflows to the east and joins the River Suck

which flows southerly into the boundary of River Suck Callows SPA, after some 4km. They submitted that they notify the local authority and erect signs if they are spraying plant protection products and that spraying was undertaken on a needs basis. They submitted that the proposed activity was not covered by the EIA Directive.

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 EU EIA Directive (Directive 2011/92/EU as amended by Directive 2014/52/EU). The FAC considered 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 6.71 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 concluded that screening for EIA was not required in this case and that breaches of Article 4(3) and 4(4) had not occurred.

An Appropriate Assessment Screening was undertaken by the DAFM and identified fourteen sites within 15km and that there was no reason to extend the radius in this case. Each site is considered in turn and is screened out for Appropriate Assessment and reasons are provided. The DAFM undertook and documented a consideration of the potential for in-combination effects and concluded that DAFM deems that this project, when considered in combination with other plans and projects, will not give rise to the possibility of an effect on the Natura sites.

The FAC considered publicly available information and identified the same fourteen sites within 15km, most of which lies at a considerable distance from the felling, and considered the reasons provided for screening by the DAFM. The proposal is for the felling of 6.71 ha of mature mainly coniferous forest and is not connected with or necessary for the management of any European site. The FAC is satisfied that there was no need to extend the radius in this case. The forest is bordered at the north and west by an un-named stream that flows easterly and enters a small lake, identified by the EPA as Linbaun Lough, water exits this lake at the north eastern corner and flows to the Suck which continues southerly and enters the boundary of River Suck Callows SPA (004097). The hydrological distance from the closest

point to the forest and the SPA is c. 4km. The direct distance is c.2.7 km. Forestry outside of the SPA has been assigned a low rank in relation to the threats and pressures identified by the NPWS in the Natura 2000 data form, last updated in 2018, as noted by the parties. Forestry is identified in a general way and no detailed consideration of the issue is included. The conservation objectives are of a generic nature and relate to a number of wetland and waterbirds and the wetland habitat that supports them. The SPA covers an extensive area of some 3,182 ha. The proposal is for the felling of a mature, primarily coniferous forest and the FAC is satisfied that this would not provide suitable habitat for, nor directly disturb through noise or light, the conservation interests or the SPA. Regarding indirect effects through impacts on water quality, as noted by the local authority the Suck 070 waterbody has a Good status and is not at risk and not in a priority area for action. Data and aerial imagery provided by the OSI shows that the forest land is flat and the stream is bordered by broadleaf trees that would not form part of the felling operation, which would be undertaken for a limited period of time followed by replanting. Based on the information before it, the FAC does not consider that there is any real potential for significant sediment release from the site. Were sediment to reach the stream it would enter Linbaun Lough where it would be diluted and settled before reaching the River Suck. The Derryhippoo River flows from the north eastern corner of the lake and flows easterly to meet the River Suck. The groundwater body (IE SH G 225) has been assigned a Good status for 2013-2018 and no evidence of a possible risk to groundwater from the proposal was provided or could be identified by the FAC. The FAC concluded that there is no evidence that the proposal would pose a significant threat to water quality or that it would result in any direct or indirect effects on the conservation objectives of River Suck Callows SPA. During the oral hearing the Appellant submitted that another felling licence two townlands from the proposed felling had proceeded to Appropriate Assessment. This information did not form part of the submitted grounds nor was it provided to the FAC or parties before the oral hearing. The FAC considered that the identified licence was located to the south of the appealed licence, significantly closer to and with the possibility for alternative hydrological connections with the SPA. The FAC considered that this information would not materially affect its decision. The next closest European site is Ballinturly Turlough SAC (00588) which lies some 6.6km to the southeast in a separate subcatchment to the forest. Based on data from the Geological Survey of Ireland, there are no documented karst features or traced underground hydrological connections in the vicinity of the forest. Aughrim (Aghrane) Bog SAC (02200) lies 7.7km to the south and hydrological connection with the forest. The remaining sites are at a very considerable distance from the proposal with some being situated in the Upper Shannon Catchment to the east of the forest. The FAC concurs with the DAFM conclusion that the proposed activity was not required to proceed to Appropriate Assessment.

As noted the FAC does not consider that the proposal poses any real threat to water quality and, correspondingly, to meeting the objectives of the Water Framework Directive (WFD). Furthermore, the application was referred to the County Council which responded in relation to water quality and the requirements of the WFD. It was confirmed at the oral hearing that the County Council was provided with the application details including maps. It was noted by the FAC that the map submitted by the County Council related to an area to the south of the proposed felling and that there was no lake adjoining the felling area but that the other details of the submission were correct. In relation to the licence conditions, the FAC considered the DAFM Interim Standards for Felling and Reforestation and

the specified conditions on the licence. While some measures might be considered to be of an advisory nature, the FAC is satisfied that the main requirements, notably those related to setbacks, are of a clear and interpretable manner. An empty condition (r) was included on the licence but the FAC is satisfied that this constitutes an obvious clerical error. In relation to condition (j) the FAC is satisfied that this condition is appropriate and can be undertaken as part of the licenced activity and that it represents good forest practice regarding the management of forests close to public roads and visual amenity.

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. In relation to the use of chemicals, the Applicant submitted that they inform the local authority of their intentions to employ spraying, that signs are erected to notify the public and that spraying is undertaken in a controlled and targeted way. The FAC concluded that, as with the use of plant protection products in other forms of land management, there is no requirement to engage in the consultation methods suggested in the grounds and that any spraying would be required to follow best practice as outlined by the DAFM. 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.

Regarding the grounds that refer to Regulation 10(3), the FAC understands this to relate to Regulation 10(3) of the Forestry Regulations 2017 (SI 191 of 2017) which provides that the Minister may make application details available to the public. The DAFM record suggests that the file related to RN11 FL0030 was sent to the Appellant on 19<sup>th</sup> February 2020 before the issuing of the licence and the making of the appeal. In addition, the Appellant proceeded to appeal the licence decision and an oral hearing of the appeal was provided. The FAC does not consider that there is any evidence that the public consultation process was inadequate in this instance.

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. In deciding to affirm the decision regarding RN11-FL0030, the FAC considered 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 Vincent Upton.

Vincent Upton, On Behalf of the Forestry Appeals Committee