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10. February. 2021

**Subject:** Appeal FAC 045/2020 regarding licence no TFL00331919

Dear Sir or Madam

I refer to the appeal to the Forestry Appeals Committee (FAC) against the decision by the Minister for Agriculture, Food and Marine (DAFM) in respect of licence TFL00331919.

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**

Felling licence TFL00331919 was granted by the Department on 15.01.20

An oral hearing of appeal FAC 045/2020 TFL00331919 was conducted by the FAC on 22.1.2021.

#### **Attendees:**

FAC: Mr Donal Maguire (Chairperson), Mr Vincent Upton, Ms Mary Lawlor & Mr Derek Daly

Secretary to the FAC: Ms Marie Dobbin

Applicant representatives: Not present

DAFM representatives: Ms Mary Coogan and Mr Martin Regan

Notification and details were issued to the appellant, but the appellant did not attend the oral hearing

#### **Decision**

The Forestry Appeals Committee (FAC) considered all of the documentation on the file, including application details, processing of the application by DAFM, the grounds of appeal, submissions made at the Oral Hearing and all other submissions, before deciding that the decision of DAFM should be set aside and remitted to the Minister (Reference TFL00331919).

The application (dated 11.4.2019) is for the thinning of a stated site area of 32.76 ha at Annaghboy Co Leitrim. The application was subjected 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 (v.05Nov19) (DAFM, 2019)*. The AA screening report completed by the inspector is included on file. The underlying soil type of the project area is described as being predominantly podzols in nature and the slope is predominantly flat to moderate (<15%).

The application was referred to Leitrim Co Council on the 16.8.2019 and they responded on the 29.8.19. In their response Leitrim Co Council, registered an objection to the application on the basis that the project was located in an area classed as having a 'low assimilative capacity for forestry' and they also

recommended the inclusion of conditions relating to the prior approval of transportation arrangements for the proposed development by the local authority.

The licence issued on 15.01.20 and is subject to standard conditions plus extra conditions, principally concerning archaeology as there are a number of national monuments adjacent to but not within the site area.

There is one appeal against the decision to grant the licence. *Inter-alia* the grounds contend that the DAFM did not carry out an EIA screening, that there was 'no visible AA screening' and that there had been the improper inclusion of mitigation measures before an AA screening, together with some other points of law.

In a statement to the FAC, the DAFM submitted that Appropriate Assessment (AA) screening was carried out by DAFM for European sites within 15 km from the thinning project. Information submitted by the applicant in the form of maps and other data was considered by DAFM during the licencing process and both a desk and field assessment were carried out. The AA Screening report was completed by the DAFM Inspector and contains recommendations regarding screened European Sites. All QIs/SCIs were also considered during the screening exercise.

The DAFM carried out a Screening for Appropriate Assessment for European sites within 15 km. This listed Arroo Mountain SAC 001403, Ben Bulbin, Gleniff And Glenade Complex SAC 000623, Boleybrack Mountain SAC 002032, Cuilcagh - Anierrn Uplands SAC, Glenade Lough SAC 001919, Lough Gill SAC 001976, Lough Melvin SAC 000426, SligoLeitrim Uplands SPA 004187 all of which were screened out due to the absence of a direct upstream hydrological connection, and subsequent lack of any pathway, hydrological or otherwise.

The FAC held an oral hearing of the appeal on 22nd of February 2021. The DAFM participated electronically, neither the appellant or the applicant was represented.

The DAFM submitted its view that the proposed thinning did not constitute an activity covered by the EIA Directive. The DAFM inspector confirmed that he had visited the site and that he was satisfied as to the absence of any aquatic zone or of any significant relevant watercourses within or adjoining the project area.

The DAFM further contended that the project design, together with adherence to the relevant Environmental Management Framework and to the site-specific mitigation measures set out in the licence, would ensure that potential residual impacts would not arise and that the project will not prevent or obstruct the Qualifying Interests/ Special Conservation Interests of the relevant European sites.

Under Article 6(3) of the Habitats Directive, any plan or project not directly connected with or necessary to the management of a European site, must be subject to an assessment of the likely significant effects the project may have on such a designated site, either individually or in combination with other plans or projects, having regard to the conservation objectives of that designated site.

Addressing the grounds of appeal, the FAC noted that the DAFM had carried out a Stage 1 screening assessment for Appropriate Assessment on eight Natura sites and had screened out all eight European sites. The FAC concluded that that this approach was correct and that there was no possibility of the

proposed development, on its own, giving rise to the likelihood of significant effects on any of the Natura 2000 sites screened out. The FAC noted the procedures adopted by the DAFM in its screening, listing the qualifying interests and conservation interests for each site and assessing the project design, location of the project and possible pathways to the listed designated sites.

The FAC noted however, that the DAFM failed to carry out an in-combination assessment before the decision to grant the licence was made. Having regard to the size of the site and the surrounding area, and to the nature and number of other features listed, the FAC is satisfied that the failure of DAFM to carry out a satisfactory in-combination assessment prior to the granting of the licence constituted a significant error in the making of the decision.

The grounds of appeal contend that the decision does not comply with the EIA Directive. In respect of the EIA Directive, the FAC concludes that thinning does not represent a class of development covered by the Directive and that the proposed development does not involve any works, which of themselves, would be a class of development covered by the Directive. As such, the FAC does not accept that there is a requirement for EIA screening in this case.

In the above circumstances, the FAC concluded that the decision of DAFM should be set aside and remitted to the Minister to carry out an Appropriate Assessment screening under Article 6 of the Habitats Directive, for any likely significant effects of the proposed development on Natura sites alone or in-combination with other plans and projects, before making a new decision in respect of the licence.

Yours Sincerely

A redacted signature consisting of three horizontal black bars covering the name and any handwritten notes.

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Donal Maguire on behalf of the Forestry Appeals Committee