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5<sup>th</sup> March 2021

**Subject:** Appeal FAC186/2020 in relation to felling licence TY06-FL0093

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 TY06-FL0093 was issued by the Department of Agriculture, Food and the Marine (DAFM) on the 25<sup>th</sup> March 2020.

#### **Hearing**

An oral hearing of appeals FAC186/2020 was held by the FAC on the 9<sup>th</sup> February 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 representative: [REDACTED]

DAFM representatives: Ms Eilish Kehoe, Mr Frank Barrett

## **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 TY06-FL0093.

The licence issued is for the clearfelling and replanting of 6.89ha of mixed species including Sitka spruce, Japanese larch, Douglas fir, and Beech at Glenmore Upper, Co. Tipperary. The proposed restock species is 100% Norway spruce. The underlying soils are approximately 54% Acid Brown Earths, Brown Podzolics and 46% Lithosols, Regosols. The slope is predominantly steep (15-30%). The project site is located in the Lower Shannon Catchment, the Nenagh\_SC\_010 Sub-Catchment and the Nenagh\_030 River Sub-Basin, a waterbody with 'Moderate' status deemed to be 'Not at Risk' by the Environmental Protection Agency (EPA) under their 2013 – 2018 assessment. The nearest EPA-mapped watercourses are c.400m to the northwest and c.430m to southwest of the project lands.

The Applicant submitted an application pack which included maps, inventory data, restock plan, a Harvest Plan document, and an Appropriate Assessment (AA) Pre-Screening Report. The DAFM completed an AA screening (AAS), dated 24<sup>th</sup> March 2020, that considered 6 Natura 2000 sites (5 SACs and 1 SPA) within 15km of the proposal, all of which were screened out for Stage 2 AA by the DAFM; Kilduff, Devilsbit Mountain SAC and Bolingbrook Hill SAC due to the absence of a direct upstream hydrological connection, and subsequent lack of any pathway, hydrological or otherwise. Lower River Suir SAC, Lower River Shannon SAC, and Silvermine Mountains SAC were screened out due to the location of the project area within a separate water body catchment to that containing the Natura site, with no upstream connection, and the subsequent lack of any pathway, hydrological or otherwise. Slievefelim to Silvermines Mountains SPA was ruled out due to the separation distance between the Natura site and the project. The DAFM completed an in-combination assessment of the proposed development's potential to contribute to a cumulative impact on Natura sites which focussed on the general vicinity of the project area in the River Sub-Basin Nenagh\_030. The DAFM consulted various planning websites along with their own records for forestry and non-forestry plans and projects in the vicinity and also consulted the North Tipperary County Development Plan 2010 (as varied) regarding objectives relating to Natura sites. The DAFM concluded that the proposed development, when considered in combination with other plans and projects, will not give rise to the possibility of a significant effect on any of the screened Natura sites.

The DAFM referred the application to Tipperary County Council, with no response, before issuing the licence issued on the 25<sup>th</sup> March 2020. The licence is exercisable until the 31<sup>st</sup> December 2022 and is subject to relatively standard conditions (a) to (g) plus (h) which requires the completion of a Harvest Plan prior to the commencement of felling, and (i) which requires the planting of broadleaves in the water setback.

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:

- Breach EIA Article 4(3) - a number of Annex III criteria did not form part of the DAFM screening.
- Breach EIA Article 4(4) - the application for this licence does not represent the whole project.
- Breach of EIA Article 4(5) - since the application does not represent the whole project, any determination reached in terms of EIA screening is not valid.
- Inadequate consideration of Water Framework Directive (WFD) objectives – clearfelling has the capacity to impact on water quality.
- Licence conditions 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.
- Breach of Article 10(3) of the Forestry Regulations – failure to make available for inspection a copy of the application.

On the 12<sup>th</sup> May 2020 the FAC sought additional information from the Appellant regarding their grounds of appeal regarding the EIA Directive, and while a response was received on the 14<sup>th</sup> May 2020, the requested information was not provided.

The DAFM submitted a response to the appeal in a written statement to the FAC which was considered in full; the following is a summary:

- Article 4(3) of the EIA Directive - this Article requires that when a Competent Authority is considering whether a category of project listed in Annex II of the Directive or in any national transposing legislation, e.g. initial afforestation, should be subject to a sub-threshold EIA, it is required to take into account the relevant selection criteria set out in Annex III of Directive. However, because the standard operational activities of clear-felling and replanting of an already established forest area are not so categorised either in Annex II of the Directive or in the national transposing legislation (and where the legislature had the discretion to include such



activities had it wished to do so), a screening assessment for sub-threshold EIA did not need to be carried out by the Department in this case and thus Articles 4(3), 4(4) and 4(5) of the Directive are not applicable.

- The DAFM applies a wide range of checks and balances during its 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). Critically, any felling licence issued is conditional on adherence to the Interim Standards for Felling and Reforestation (DAFM, 2019), which set out a wide range of operational measures to prevent direct and indirect impact on water quality arising from the operation. The DAFM is fully informed of its responsibilities regarding the achievement of objectives under the WFD.
- It's 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.
- Please see file for correspondence with DAFM related to requests from the appellant for copies of 451 Coillte felling licence applications and related files. A number of the granted licences were subsequently appealed by the appellant including the current licence under appeal – TY06-FL0093. The AAS report was completed by the Inspector and contains the recommendations regarding screened out European Sites. A number of the Qualifying Interests (QIs)/Special Conservation Interests (SCIs) were truncated on the AA Screening form for project TY06-FL0093 when outputting the form related to the screening exercise. However, all QIs/SCIs were considered during the screening exercise itself and the screening determination is considered sound. A revised AA screening form, including a full QIs/SCIs listing for all screened European sites, is included on file.

The FAC held an Oral Hearing on the 9<sup>th</sup> February 2021. The FAC members sat in person and remotely at this hearing. The Appellant and the Applicant did not participate and the DAFM participated remotely. The DAFM detailed the process leading to their decision to grant the licence and stated that an AA screening of Natura sites within 15km had been completed and that all of these sites, listed in the AA screening form, had been screened out for Stage 2 AA. The DAFM stated that condition (i) had been attached to the licence as they had identified a watercourse rising from the site, visible on the OSi 6"

map. The DAFM stated that this watercourse leaves the site and crosses agricultural land before joining the Nenagh River network which ultimately drains to Lough Derg (Shannon) SPA. The EPA Mapping shows that the site is hydrologically connected to this SPA at a distance of c.32km. The DAFM confirmed the in-combination assessment had been considered prior to issuing the licence. They explained the technical issue which resulted in the truncation of the initial AA screening form but stated that all of the QIs/SCIs had been considered during the decision making process. They indicated the updated AA screening form had been produced to correct the original issue prior to submitting the form to the FAC. The FAC queried if condition (i) was a mitigation measure to which the DAFM responded that it was standard practice for conditions for the protection of water quality and the River Sub-Basin to be added to a licence and that the Interim Standards for Felling and Reforestation contained measures relating to sediment traps and setbacks.

The FAC queried the DAFM regarding their correspondence with the Appellant in relation to the grounds which contends the DAFM had failed to make available for inspection a copy of the application. The DAFM stated that they had received a request from the Appellant on the 30<sup>th</sup> March 2020 and had responded on the 17<sup>th</sup> April 2020, providing the requested documentation. Responding to a FAC question, the DAFM stated that the restock species proposed by the Applicant is considered, stating that, in this case, broadleaf species were being replaced by Norway spruce but that the exposure and elevation of the project site would not be suitable for productive broadleaf planting. They stated that the DAFM had accepted the Applicant's proposal in this instance and that the Applicant is certified under two forest certification bodies and that the planting of broadleaves had increased over their estate in general. The FAC queried why the restock species in Schedule 3 of the licence stated 100% Norway spruce but the licence conditions required the water setback to be planted with 20% broadleaves. The DAFM stated the restock species in Schedule 3 is based on the species applied for but that the licence conditions essentially modify this and that the DAFM would expect full compliance with the conditions of the licence, which the DAFM consider binding. The DAFM confirmed the River Sub-Basin as the Nenagh\_030 and stated this waterbody is deemed to be 'Not At Risk' according to the [www.catchments.ie](http://www.catchments.ie) data.

The FAC addressed the grounds of appeal, initially considering the submission that the proposed development should have been addressed in the context of the EIA Directive. The 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 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 assessment under 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 decision under appeal relates to a licence for the clearfelling and replanting of an area of 6.89ha. 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.

The FAC had regard to the grounds relating to the WFD and the potential for clearfelling to impact on water quality. The FAC observed that licence conditions (a), (b), (h) and (i) were attached to the licence and all deal with water protection measures in various forms. The FAC observed the DAFM had identified a hydrological connection between the felling site and Lough Derg (Shannon) SPA. The FAC noted that this SPA is a considerable distance (c.32km) from the project lands and is satisfied there is no possibility of the licenced operations giving rise to a significant effect on this site. Based on the information before it, the FAC concluded that there is no convincing evidence that the proposed development would give rise to a negative impact on water quality.

In relation to a requirement for the licence conditions to provide a system of protection for wild birds during the breeding and rearing season, the FAC noted that the Appellant did not provide any site-specific details in this regard. The FAC noted 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 considered the DAFM's statement relating to their correspondence with the Appellant and the delay in the provision of documentation relating to the application. However, the FAC noted the Appellant was provided with the relevant information prior to the expiry of the 28 days period afforded for the submission of an appeal to the FAC.

Based on the information before it, the FAC concluded that the DAFM did not make a serious or significant error or series of errors in their decision to issue the licence, and did so in compliance with

fair procedures. In deciding to affirm the decision to grant the licence, the FAC 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 Luke Sweetman.

Luke Sweetman on Behalf of the Forestry Appeals Committee