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21st May 2021

Subject: Appeal FAC650/2020 in relation to felling licence TFL00332519

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 TFL00332519 was issued by the Department of Agriculture, Food and the Marine (DAFM) on the 13th August 2020.

Hearing

An Oral Hearing of appeal FAC650/2020 was held by the FAC on the 13th May 2021.

Oral Hearing participants:

FAC: Mr Des Johnson (Chairperson), Mr Dan Molloy, Mr John Evans & Mr Luke Sweetman
Secretary to the FAC: Mr Michael Ryan
DAFM representatives: Ms Eilish Kehoe, Mr Kevin Keary

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 TFL00332519.

The licence under appeal is for the clearfell and replanting of 8.5ha of 100% Sitka spruce in Bealcragga, Kilcolumb, Co. Clare. The proposed restock species are 85% Sitka spruce and 15% Additional Broadleaves. The DAFM information states the underlying soils are predominately Podzols in nature and the slope is predominantly flat to moderate (<15%). The site is within the 27 Shannon Estuary North Catchment, the Fergus_SC_050 Sub-Catchment and the Inch (Clare)_010 River Sub-basin. A drain which functions as a relevant watercourse (RWC) connects to the Inch (Clare)_010 Waterbody which is c.90m west of the proposal, which then flows south and provides surface water connectivity with the Lower River Shannon SAC and River Shannon and River Fergus Estuaries SPA, which have a downstream hydrological distance of c.19km and c.26km respectively. The Inch (Clare)_010 was assigned 'Good' status and deemed to be 'Not at Risk' by the Environmental Protection Agency in the Water Framework Directive 2013-2018 reporting period.

The applicant submitted a felling licence application with a Harvest Plan and associated maps. An updated Harvest Plan was requested by the District Inspector to address the presence of RWCs on-site. In assessing the licence application, two Stage 1 Appropriate Assessment (AA) Screenings are in evidence before the FAC, one using a 3km radius (dated 30th July 2019) and a second screening using a 15km radius (undated). The second AA Screening is contained within the Inspector's Certification document and, in the version before the FAC, screens out 14 Natura sites within 15km of the proposal with reasons provided. The DAFM's Statement of Facts states that "after conducting a few iterations of the AA Screening Procedure since mid-2019 and a request for further information regarding an improved Harvest Plan, two Natura 2000 sites were screened in: Lower River Shannon SAC and River Shannon and River Fergus Estuaries SPA." The project proceeded to Stage 2 AA and an AA Report (AAR) was completed by an external Ecologist on behalf of the DAFM on the 7th July 2020. The AAR contains the "original AA Screening" which screens out 12 Natura sites for the following reasons:

- **Ballyallia Lake SAC, Ballyallia Lough SPA, Ballycullinan Lake SAC, Ballycullinan, Old Domestic Building SAC, Corofin Wetlands SPA, Dromore Woods And Loughs SAC, East Burren Complex SAC, Knockanira House SAC, Newhall and Edenvale Complex SAC, Old Farm Buildings, Ballymacrogan SAC, Pouladatig Cave SAC, Toonagh Estate SAC:**
 - 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 hydrological connection.
 - The unsuitability of the project area for use by any species listed as a qualifying interest of the Natura site.

In relation to the Lower River Shannon SAC and the River Shannon and River Fergus Estuaries SPA, the screening document within the AAR states that their screening conclusion is "on hold."

The AAR considers the potential for the proposal to have adverse effects on the integrity of the Lower River Shannon SAC and the River Shannon and River Fergus Estuaries SPA in light of their Conservation Objectives before prescribing site-specific mitigation measures to be included as licence conditions. These conditions relate to machine exclusion zones, water setbacks and adherence to specified standards and requirements during felling and reforestation. The AAR consulted various planning websites along with DAFM internal records in completing an assessment of the potential for the proposal to contribute to an in-combination impact on Natura sites in the vicinity of the River Sub-Basin Inch (Clare)_010. The AAR deemed that this project, when considered in combination with other forestry and non-forestry plans and projects, "will not give rise to any adverse effect on the integrity of any European site."

The DAFM made an AA Determination (AAD) which states that the DAFM adopts the AAR prepared by the external Ecologist and lists the prescribed mitigation measures from the AAR, to be attached as licence conditions. The AAD states that based on objective information, "no reasonable scientific doubt remains as to the absence of any adverse affect on the integrity of any European site."

The Inspector's Certification states that the project area, together with existing thinning and/or clearfelling of three years or less within a 500m radius constitutes an area of 17.24ha. It also states that the project area, together with other thinning and/or clearfelling applications within 500m and recommended for felling equates to an area of 17.24ha.

The DAFM referred the application to Clare County Council, who did not respond, and the DAFM Archaeologist who stated that he had no specific archaeological recommendations other than normal

adherence to the terms of the Forestry and Archaeology Guidelines and Forest Harvesting and the Environment Guidelines. The licence issued on the 13th August 2020 and is exercisable for two years. The licence is subject to relatively standard conditions (a) to (g) plus (h)(i) Public road setback – broadleaves 10m, conifers 20m, (ii) Adhere to the mitigation measures contained in the attached AAR and AAD, (iii) At replanting, install appropriate road setbacks, (iv) Strictly adhere to the Standards for Felling & Reforestation (October, 2019). These Standards replace existing Harvesting & the Environment Guidelines (2000).

There is one appeal against the licence - FAC650/2020:

- This development was screened in.
- No Appropriate Assessment according to EU and Irish law was carried out.

The DAFM responded in a written Statement to the FAC, as summarised below:

The exact date of inspection is not recorded in iFORIS but was carried out in early 2020. After conducting a few iterations of the Appropriate Assessment Screening Procedure since mid 2019 and a request for further information regarding an improved harvest plan, two Natura 2000 sites were screened in: Lower River Shannon SAC and River Shannon and River Fergus Estuaries SPA. The AAR (including In-combination effects) and the subsequent AAD were compiled by the ecological unit.

The basis for the AAS is the nature and scale of the project and the hydrological distance between the site and the coastal and estuarine Qualifying Interests, the development is situated outside of the foraging range of the species in the SPA, mitigation measures will ensure that there are no adverse impacts to any Natura sites.

The FAC held an Oral Hearing on the 13th May 2021. The FAC sat remotely, neither the applicant nor the appellant participated and the DAFM representatives participated remotely. The DAFM detailed their approach to processing the application, confirming the Local Authority had not responded to their referral. The District Inspector stated that a site inspection had been carried out in early 2020 but could not confirm the date. He stated that the site contains a number of drains which flow to aquatic zones and provide the hydrological link between the application site and the Lower River Shannon SAC and the River Shannon and River Fergus Estuaries SPA. The Inspector confirmed that the measures from the AAD were attached to the felling licence. He stated that his site inspection coincided with very heavy rain and indicated that attention to detail would be required by the forestry contractor to ensure there are no problems with water quality. The FAC queried the status of the adjoining felling licence application. The DAFM confirmed that this application had been referred to the Ecology Unit. The DAFM confirmed there are two applications in the same block of forestry and stated that the cumulative effect must be considered. It was confirmed that the application for the adjoining plot (TFL00507820) had been submitted on the 16th June 2020, four days after the DAFM's in-combination report had been produced (12th June 2020). The FAC queried the referral to the DAFM Archaeologist and if a response had been provided. The DAFM confirmed that the Archaeologist had confirmed via a note on iFORIS that no particular archaeological concerns arose from the application.

The FAC queried why the AA Screening documents before the FAC do not screen in any Natura sites but the application was progressed to AA nonetheless. The District Inspector explained that, at times, if an application needs to be re-certified on iFORIS, older iterations of the screening conclusions can be lost. The Inspector confirmed that he had screened the proposal in for Stage 2 AA and that's why the application progressed to an AAR. Responding to FAC queries the DAFM did not provide a particular reason for the 2 year exercisability limit of the licence and stated an issue has arisen in multiple licences where the licenced felling year has passed because of a backlog of files awaiting determination. They also

explained that the AAD was attached to the licence rather than have the mitigation measures listed as individual licence conditions due to limitations of the text-boxes in iFORIS, and that the AAD is provided to the applicant.

The FAC had regard to the grounds of appeal. The FAC considered the appellant's submission that "this development was screened in" to refer to the DAFM's screening-in of the proposal for Stage 2 AA. The appellant also submitted that "no AA according to EU and Irish law was carried out". The appellant did not substantiate this claim or provide any further information for the FAC's consideration. The FAC noted that, as detailed above, the DAFM completed an AA Screening leading to two European sites, the Lower River Shannon SAC and the River Shannon and River Fergus Estuaries SPA being screened in for Stage 2 AA. An AAR was prepared by an external Ecologist, the conclusions and recommendations of which were adopted by the DAFM in making their AAD. The AAD concludes that no reasonable scientific doubt remains as to the absence of any adverse affect on the integrity of any European site. The mitigation measures prescribed in the AAD were subsequently attached to the felling licence issued by the DAFM. Based on the information before it, the FAC is satisfied that the DAFM's AA procedures were in line with the requirements of Article 6(3) of the Habitats Directive.

In the circumstances outlined above, and based on the evidence before it, the FAC is satisfied that the DAFM did not make a serious or significant error, or series of errors, in their decision to issue TFL00332519 and did so in compliance with fair procedures. In deciding to affirm the decision of the Minister, the FAC considered that the proposed development is in line 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