



[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

23<sup>rd</sup> December 2020

**Subject:** Appeal FAC 525/2020 regarding licence CE02-FL0237

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**

Licence CE02-FL0237 for felling and replanting of forest on 14.95 ha at Loughaun North. Co. Clare, was approved by the Department of Agriculture, Food and the Marine (DAFM) on 2<sup>nd</sup> of July 2020.

**Hearing**

An oral hearing of the above appeal, of which all parties were notified and representatives of the DAFM and the Applicant attended, was held by the FAC on 16<sup>th</sup> December 2020.

**In Attendance at Oral Hearing:**

Department Representative(s):

Mr. Frank Barrett, Ms. Eilish Keogh,

Appellants:

Applicant / Representative(s):

FAC Members:

Mr. John Evans (Deputy Chairperson), Mr. Vincent Upton, Mr. James Conway, and Mr. Seamus Neely.

Secretary to the FAC:

Ms. Marie Dobbryn.

**Decision**

Having regard to the evidence before it, including the record of the decision by the DAFM, the notices of appeal, submissions received including at the oral hearing, clarifications obtained, and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister regarding licence CE02-FL0237.

The licence pertains to the felling and replanting of forest on 14.95 ha at Loughaun North. Co. Clare. The forest is currently composed of Sitka Spruce. Replanting is to be of Sitka spruce [SS] (50%) and Lodgepole Pine [LPS] (50%). The application was dated the 2<sup>nd</sup> of December 2019. It included a harvest plan, including maps, general environmental and site safety rules related to the operations, and an Appropriate Assessment pre-screening Report. The site is described as being on a predominantly moderate slope (0-15%), with a soil type that is Blanket peats (100%), and a habitat that is predominantly coniferous forest (WD4). The site is in the Rine\_SC\_010 sub-catchment, part of the Shannon Estuary North [27] Catchment. The river Rine bounds the site to the southeast.

The proposal was referred to Clare Co. Council and no response was received. A referral was made to the NPWS on the 10<sup>th</sup> of December 2019, and a response was received on the 22<sup>nd</sup> of January 2020.

No screening document for appropriate assessment was on file, however full details of the screening process and conclusions are included in the Appropriate Assessment document which has a final review date of the 26<sup>th</sup> of June 2020. The screening process detailed records the identification of 4 SPAs and 17 SACs.

The Slieve Aughty Mountains SPA [4168] was screened in for Appropriate Assessment due to the location of the project within that Natura Site. The Lough Cutra SPA [4056], the Coole-Garryland SPA [4107] and the Ballyallia Lough SPA [4041] were screened out due to the separation distance between those Natura sites and the project.

The Glendree Bog SAC [1912], the East Burren Complex SAC [1926], the Ballyogan Lough SAC [0019], the Dromore Wood and Lough SAC [0032], the Slieve Bernagh Bog SAC [2312], the Moyree River System SAC [0057], and the Ballyallia Lake SAC [0014], were screened out due to the absence of a direct upstream hydrological connection, and subsequent lack of any pathway, hydrological or otherwise.

The Old Domestic Buildings, Rylane SAC [2314], the Cregg House Stables, Crusheen SAC [2317], the Newgrove House SAC [2157], the Lough Cutra SAC [0299], and the Old Domestic Buildings (Keevagh) SAC [2010] were screened out due to the location of the project outside of the core foraging range of the listed species (the Lesser Horseshoe Bat), and the absence of a direct hydrological connection, and subsequent pathway, hydrological or otherwise.

The Gortacarnaun Wood SAC [2189], the Drummin Wood SAC [2181], the Termon Lough SAC [1321], and the Coole-Garryland Complex SAC [0252] were screened out due to the location of the project area within a separate waterbody catchment to that containing the Natura site, with no upstream connection, and the subsequent lack of any pathway, hydrological or otherwise.

The Lower River Shannon SAC [2165] was screened out as the hydrological distance of 25km, as well as the scale of the operation (14.94ha), eliminates any potential risks to the site features.

The licence was approved with a number of conditions attached, which included those related to the mitigation of effects on Hen Harrier and Merlin as outlined in the appropriate assessment report and recommended in the response from NPWS.

The decision to grant the Licence is subject to one appeal. The grounds of appeal include; Breach of Article 4 (3) of the EIA Directive 2014/52/EU through failure to carry out screening for EIA, Breach of Article 4 (4) of the EIA Directive 2014/52/EU submitting that the licence application does not represent the whole project and a further breach of that directive on the ground that the application does not describe any aspects of the environment which are likely to be significantly affected, that the licence and its associated operations threaten the achievement of objectives of the River Basin Management Plan for Ireland 2018-21, that the Stage 1 and Stage 2 AA determinations are not legally valid, that the opinion of the general public has not been sought under Article 6 (3) of the Habitats Directive on the AA Determination, that the Harvest Plan is not consistent with the requirements of the Interim Standard for Felling and reforestation, that the licence conditions do not provide a system of strict protection for animal species as would be required by Article 12 of the Habitats Directive, 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 Article 5 of the Birds Directive, that the licence should contain a condition that plans and works must be inspected by Forestry Service prior to, during and post works to ensure compliance, and that the licence should include conditions regarding notification to appropriate bodies, groups and the public concerned in the case of any spraying of chemicals.

In the statement to the FAC in relation to the appeal dated the 8<sup>th</sup> of October 2020, the DAFM provide responses to each of the grounds included in the appeal. It 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. This view was restated by the DAFM representative during the oral hearing in this case. In relation to the contention that the licence and its associated operations threaten the achievement of objectives in the River Basin Management Plan for Ireland 2018-21, the DAFM statement outlines the checks and balances that DAFM applies 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 DAFM representatives at the oral hearing also outlined the processing of the application and the information submitted by the Applicant including maps of the proposal.

The statement by DAFM asserted, in relation to the ground of appeal that the Harvest Plan was not consistent with the requirements of the Interim Standard for Felling and Reforestation, that the Department had considered the application and associated information submitted by the applicant, and

had determined that the information met the DAFM requirements. In relation to the ground contending that there was an absence of a system of protection for Wild Birds, the DAFM stated that the granting of a licence did not relieve the applicant of their obligations under other law. In relation to the ground contending that there was an absence of strict protections for animal species listed in Annex IV(a) of the Habitats Directive, the DAFM stated that site specific mitigations identified during Appropriate Assessment, were attached as licence conditions.

In relation to the grounds of appeal relating to licence conditions on commencement, during and conclusion of works, and inspections by the Forest Service, the DAFM statement asserted that it was for the Minister to attach conditions as appropriate.

In relation to the contention in the appeal that there should be conditions requiring notification to appropriate bodies groups and the public concerned in the case of spraying of chemicals, the DAFM submitted that the use of plant protection products in Ireland is governed by Statutory Instrument 155 of 2012 and Statutory Instrument 159 of 2012, that these Statutory Instruments are published by the DAFM and provide the basis for the proper and appropriate use of these products. The statement also submitted that there is no legal requirement for forest owners to inform adjacent landowners of their intention to spray, nor is there a need for animals in adjacent properties to be moved as the application of this plant protection product is by hand in a very targeted manner that minimises exposure of the environment.

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. 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 decision under appeal relates to a licence for the felling and replanting of an area of 14.95 ha. 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 and therefore considered that breaches of Article 4(3) and 4(4) had not occurred.

In relation to the contention that the licence and its associated operations threaten the achievement of objectives in the River Basin Management Plan for Ireland 2018-21, the FAC notes the DAFM statement

dated 8<sup>th</sup> October 2020 wherein it outlines the checks and balances that DAFM applies 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 notes that the proposal was referred to Clare Co. Council and that no reply was received. Examination of EPA WFD Catchment data by the FAC indicates that the waterbody adjacent to the site has an ecological water status designation of Good based on a monitoring cycle that occurred while the site in a forested state, and that the licence contains conditions designed to protect the water body during felling and replanting operations. Having regard to the information available to it including the licence conditions, the submissions and clarifications made to the oral hearing, and having examined the relevant maps and data publicly available on the EPA website, the FAC is satisfied that the proposal does not pose a significant threat to water quality.

The FAC noted the content of the DAFM statement provided in relation to the contention that the Stage 1 and Stage 2 AA determinations are not legally valid. Under Article 6(3) of the Habitats Directive, a 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. In this case the proposed felling and reforestation project (CE02-FL0237) is not necessary for the management of any European Site. DAFM undertook a Stage 1 screening in relation to twenty one European sites (17 SAC & 4 SPA) one of which (Slieve Aughty Mountains [4168]) contains the project site. The FAC examined publicly available information from the NPWS and EPA and identified the same sites. The closest SAC is 001912 Glendree Bog SAC which lies c.1km to the east at its closest point and is separated by existing forest and the proposal land drains westerly. The next closest SAC is 002314 Old Domestic Buildings, Rylane SAC which lies over 7km from the proposal area. Each site was considered in turn as part of the DAFM Appropriate Assessment process, along with its qualifying interests and conservation objectives and the reasons for the screening conclusions. The grounds of appeal do not identify any specific concerns with the conclusions reached. The DAFM concluded that an appropriate assessment should be undertaken in relation to the SPA in which the site is located, with the other sites screened out. An appropriate assessment report and determination was prepared with ecological review, and mitigation measures were derived and incorporated into the licence conditions. The reasons on which the screening decisions were made are set out and recorded in the screening and AA reports for the project. The special conservation interests, conservation objectives, adverse impacts and the species specific mitigation measures in relation to the SPA are described. As the project overlaps with a High Likelihood Nesting Area relating to Hen Harrier (*Circus cyaneus*), the Special Conservation Interest of the SPA, no potential disturbance operations associated with the project may take place during the Hen Harrier breeding season. Separate measures are derived for the Merlin (*Falco columbarius*) that include an exclusion of forestry operations within 1st March to 31st August inclusive within 100 metres of the forest edge where that edge adjoins specified habitats. The grounds of appeal do not identify a specific concern regarding effects, impacts or mitigation measures described in the appropriate assessment report and determination. The Appropriate Assessment includes an in-combination effects assessment, with planning searches from the Local Authority (15), An Bord Pleanála (0), the EPA (0) and other forestry consents (17) considered. It



also considers the contents of the county development plan. It concludes there is no possibility of the in-combination effects. The FAC considered that the DAFM had sufficient information in respect of the characteristics of the proposal, the location, and types and characteristics of potential impacts, in order to determine the likely significant effects of the proposal itself or in combination with other plans and projects on a European site. The FAC is satisfied that measures designed to avoid or reduce the effects of the proposal on a European site were not considered at the screening stage but were considered at the Stage 2 or Appropriate Assessment and that the related measures are incorporated into the licence conditions. The FAC further considers that the procedures adopted by the DAFM provide for opportunities for the public to make submissions on the proposal. The procedures adopted by the DAFM in their assessment are considered to be acceptable. The DAFM determination concludes that;

*"the Department of Agriculture, Food & the Marine has determined, pursuant to Article 6(3) of the Habitats Directive, the European Communities (Birds & Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011) (as amended) and the Forestry Regulations 2017 (S.I. No. 191 of 2017), as amended by inter alia the Forestry (Amendment) Regulations 2020 (S.I. No. 31 of 2020), and based on objective information, that no reasonable scientific doubt remains as to the absence of adverse effects on the integrity of any European site.*

*For the purposes of 42(16) of S.I.477/2011, the DAFM has determined that the project will not adversely affect the integrity of any European Site."*

Based on the information available to it, the FAC is satisfied that there was no serious or significant error or series of errors in the making of the decision regarding appropriate assessment in relation to this proposal.

The grounds of appeal submit that the Harvest Plan is not consistent with the requirements of the Interim Standard for Felling & Reforestation but does not elaborate on specific concerns. A harvest plan was provided with the application which outlined inventory and restocking details and maps identifying the proposal, forest roads, water courses, archaeological features, designated sites and other environmental features. The DAFM in its statement submitted that the Applicant provided such plans and that all materials submitted with this application were fully assessed by DAFM in considering the application and confirmed this at the oral hearing. The FAC is satisfied that the Harvest Plan submitted with the application is sufficient to inform the decision-making process in this case.

In relation to the appellants stated grounds 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 Article 5 of the Birds Directive, the FAC had regard for the statement provided by DAFM, and confirmed its understanding of the wording of the response to this ground of appeal at the oral hearing. The FAC understands the DAFM position to be that as a general principle, a licence should not contain conditions that refer to obligations placed on a licence holder through legislation other than that under which the licence is granted. Those obligations continue to apply to the licence holder, unless the license specifically relieves the licence holder of the obligation, which does not apply in this case. In

such instances, the licence holder must obtain the necessary permits as required under law to ensure the protection of wild birds during the period of breeding and rearing. The FAC concurs with this view.

The FAC also had regard to the statement by the DAFM, in consideration of the ground of appeal relating to the requirements of Article 12 of the Habitats Directive, that there are site-specific mitigations identified in the AA Report and AA Determination Statement. The FAC is satisfied that these were attached as conditions of the licence issued.

Regarding the submission in the grounds of the appeal that certain conditions should be attached to the licence, including those relating to notification and inspections specific to this licence, the FAC considered that the Minister may attach conditions, including the erection of site notices and any other environmental or silvicultural requirements, as the Minister considers appropriate. The FAC is satisfied, based on the information available to it, that the inclusion of the conditions as raised in the grounds of appeal in this case, is not required.

In considering the appeal in this case the FAC had regard to the record of the decision and the submitted grounds in the appeal, other submissions received, the submissions made and clarifications obtained 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 of the Minister regarding licence CE02-FL0237 in line with Article 14B of the Agricultural Appeals Act 2001, as amended, the FAC considered that the proposed development would be consistent with Government policy and Good Forestry Practice.



---

John Evans On Behalf of the Forestry Appeals Committee

