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24th December 2020

Subject: Appeal FAC563/2020 regarding licence DL12-FL0040

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 DL12-FL0040 for felling and replanting of 8.9 ha at Altinerin, Meenacung, Co. Donegal was issued by the Department of Agriculture, Food and the Marine (DAFM) on 17th July 2020.

Hearing

A hearing of appeal FAC563/2020 was held by the FAC on 22nd December 2020.

FAC Members in attendance: Mr. Des Johnson (Chairperson), Mr. Pat Coman, Mr. James Conway, Mr. Vincent Upton

Decision

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notice of appeal, submissions received and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister for Agriculture, Food and the Marine regarding licence DL12-FL0040.

The decision pertains to a felling licence for 8.9 ha at Altinerin, Meenacung, Co. Donegal. The forest is currently composed of Sitka spruce and lodegpole pine primarily planted in 1955 and 1963 and it would be replanted with Sitka spruce. The application includes inventory details, maps, and a harvest plan including general environmental and site safety rules and an AA pre-screening report. The DAFM undertook and recorded a screening for appropriate assessment and examined 10 sites in particular, 000173 Meentygrannagh Bog SAC, 002301 River Finn SAC, 004039 Derryveagh And Glendowan Mountains SPA, 002047 Cloghernagore Bog And Glenveagh National Park SAC, 002176 Leannan River SAC, 001107 Coolvoy Bog SAC, 000140 Fawnboy Bog/Lough Nacung SAC, 000197 West Of Ardara/Maas

Road SAC, 000142 Gannivegil Bog SAC, 002287 Lough Swilly SAC. A 15km radius was employed initially which was extended to include Lough Swilly SAC. Derryveagh And Glendowan Mountains SPA 004039 was screened in to proceed to appropriate assessment due to the proximity of potential habitat for the species listed as the Special Conservation Interest of this Natura site. The application was referred to Donegal County Council and Inland Fisheries Ireland. Inland Fisheries Ireland responded that the operations must comply with forestry guidelines. The licence was issued on 17th July 2020 and is exercisable until 31st December 2022. A number of conditions were attached to the licence and reasons are provided.

There is one appeal against the decision. The grounds contend that the Appropriate Assessment screening did not comply with the decision of *Finlay J in Kelly* and that there has been no investigation as to whether the application site has complied with the requirements of EU law. Further grounds relate to issues outside of the remit of the FAC.

In a statement to the FAC, the DAFM submitted that Department is satisfied that all criteria as outlined in the following standards and procedures have been adhered to in making a decision on the application and that has 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 (v.05Nov19)* (DAFM, 2019). The DAFM submitted that the clearfell and reforestation project was screened in and an Appropriate Assessment carried out for European sites considered during the screening exercise. The DAFM submitted that it was concluded that the proposed felling and reforestation project, when considered on its own, will not result in any residual adverse effect on the Derryveagh and Glendowan Mountains SPA 004039 and associated Special Conservation Interest and Conservation Objectives. There is therefore no potential for the proposed works to contribute to any cumulative adverse effects on this European site, when considered in-combination with other plans and projects. DAFM concluded that the identified potential pathways for any adverse effect are robustly blocked using avoidance, appropriate design and the implementation of best practice, and through the mitigation as set out within the AA Report and AA Determination Statement for DL12-FL0040.

DAFM determined, pursuant to Regulation 42(16) of the European Communities (Birds and Natural Habitats) Regulation 2011 (as amended) and based on objective information, that the project (DL12-FL0040), either individually or in combination with other plans or projects, will not adversely affect the integrity of any European site. It was submitted that the qualifying interests of the European sites were truncated in the original form when it was outputted but that all species and habitats were considered.

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. The grounds of appeal contend that the appropriate assessment screening undertaken does not comply with the law but does not identify a specific European site, pathway or effects of concern. The proposal is for the felling and replanting of an area of 8.9 ha of commercial forest and is outside the boundary of any European site


and is not connected with or necessary to the management of any European site. The DAFM undertook and documented a Stage 1 screening in relation to ten Natura 2000 sites, as noted. The FAC examined publicly available information provided by the EPA and NPWS and confirmed the proximity of the proposal to the identified European sites. Meentygrannagh Bog SAC is the closest European site and lies to the south of the proposal but is upstream and its qualifying interests are a number of terrestrial habitats. Derryveagh and Glendowan Mountains SPA 004039 lies to the north of the proposal and the DAFM screened this site in for Stage 2 Appropriate Assessment on the basis of the proximity of potential habitat for the species listed as the Special Conservation Interest of the site. An assessment is made of the SPA by listing the special conservation interests, conservation objectives and the potential for adverse effects arising from the proposed development on the qualifying interest. The report lists potential impacts - direct and indirect, short term and long term, and operational. The Special Conservation Interest of SPA are Merlin (*Falco columbarius*), Peregrine (*Falco peregrinus*), Red-throated Diver (*Gavia stellata*), Golden Plover (*Pluvialis apricaria*) and Dunlin (*Calidris alpina schinzii*) and the proposal would fall within the foraging range of some of the species. The Appropriate Assessment Report determined that no specific mitigation measures were required for three of the species due to the degree of separation from the SPA and measures are included for Merlin (*Falco columbarius*) and Peregrine (*Falco peregrinus*) based on identified possible effects. The DAFM maintained a record of other plans and projects, both forestry and non-forestry, considered in combination with the proposal. Having regard to the record of the decision the FAC is satisfied that no measures designed to reduce or avoid effects on a European site were considered at the Stage 1 or screening stage and that none would be required to reach the conclusions recorded and that there is no likelihood of the proposal, itself or in combination with other plans or projects, having a significant effect on the identified "screened out" European sites. In addition, following the precautionary principle, the FAC is satisfied that it was appropriate for the DAFM to proceed to Stage 2 Appropriate Assessment in regards Derryveagh and Glendowan Mountains SPA. In addition, the FAC is satisfied that mitigation measures were considered at the Stage 2 or Appropriate Assessment in relation to Derryveagh and Glendowan Mountains SPA 004039 and that these measures are included as licence conditions. The FAC is also satisfied that the appropriate assessment was undertaken prior to a decision being made on the application and both Stage 1 and Stage 2 were completed with review by an ecologist. While the DAFM notes that a number of qualifying interests are truncated on the screening record the FAC concluded that this error is of a clerical nature and would not affect the outcome of the Appropriate Assessment. The FAC concluded based on the information before it that there was no evidence of a significant or serious error or a series of errors having been made in the stage 1 and stage 2 Appropriate Assessment and that the project will not adversely affect the integrity of Derryveagh and Glendowan Mountains SPA.

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 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 Forestry Regulations 2017 (S.I. 191 of 2017), 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 decision before the FAC relates to the felling and subsequent replanting of 8.9 ha of commercial forest managed for roundwood production. The FAC concluded that the felling and replanting 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 not covered by national regulations and that screening under the EIA Directive was not required in this case.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal, and any other submissions received. 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. The FAC is thus affirming the decision of the Minister regarding licence DL12-FL0040 in line with Article 14B of the Agricultural Appeals Act 2001, as amended. In deciding to affirm the decision, 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 Vincent Upton.

Vincent Upton On Behalf of the Forestry Appeals Committee