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30<sup>th</sup> March 2021

**Subject:** Appeal FAC058/2020 regarding licence CN84450

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 CN84450 is for the afforestation of 2.54 hectares at Cloonalough Co. Roscommon which was approved by the Department of Agriculture, Food and the Marine (DAFM) on the 21st January 2020.

#### **Hearing**

An oral hearing of appeal FAC058/2020 was held by the FAC on 11<sup>th</sup> March 2021.

In attendance:

FAC Members: Mr. Des Johnson (Chairperson), Mr. Derek Daly, Mr Luke Sweetman, Mr. Dan Molloy

Secretary to the FAC: Mr. Michael Ryan

DAFM Representatives: Ms. Mary Coogan, Mr. Momme Reibisch.

Appellant: [REDACTED]

Applicant: [REDACTED]

#### **Decision**

Having regard to the evidence before it, including the record of the decision by the DAFM, the notice of appeal, submissions received including at the oral hearing, and, in particular, the following considerations, the FAC has decided to affirm the decision of the Minister regarding licence CN84450.

#### **Licence.**

The licence pertains to the the afforestation of 2.54 hectares at Cloonalough Co. Roscommon. The proposal would involve the planting of 2.16 hectares of Sitka spruce and 0.38 hectares comprising broadleaf woodland. The soil type underlying the project area is stated as highly modified peat and peaty podzols in nature. The slope is predominantly flat to moderate. The vegetation type within the project area comprises wet grassland with some rushes.

The proposal was referred to Roscommon County Council who did not respond.

National Park and Wildlife Service (NPWS) response dated the 22nd January 2019 indicated that as the site borders the River Suck screening for Appropriate Assessment should be completed.

The application for an archaeological assessment was referred by the DAFM and the response dated 13th January 2019 indicated no objections with no specific recommendations in relation to the site.

An Appropriate Assessment screening was carried out and recorded on the file. The screening considered fourteen sites within 15km and that there was no need to expand this radius in this case and other plans and projects considered are recorded. The European sites considered were Bellanagare Bog SAC 000592; Bellanagare Bog SPA 004105; Carrowbehy/Caher Bog SAC 000597; Cloonchambers Bog SAC 000600; Coolcam Turlough SAC 000218; Corliskeagh/Trien/Cloonfelliv Bog SAC 002110; Croaghill Turlough SAC 000225; Derrinea Bog SAC 000604; Drumalough Bog SAC 002308; Errit Lough SAC 000607; Lough Corrib SAC 000297; River Moy SAC 002298; Urlaur Lakes SAC 001571 and Williamstown Turloughs SAC 002296. The potential for in-combination effect was also assessed. The overall conclusion was to screen out all sites concluding no possibility of a significant effect on any Nature site, and that Appropriate Assessment was not required as the project does not represent a source or pathway for an adverse effect on any Natura site or the potential to contribute to such effects when considered in-combination with other plans and projects.

The licence was issued on the 22nd January 2020 subject to standard conditions and a specific condition relating to planting of broadleaves.

#### **Appeal.**

There is one appeal against the decision.

The grounds contend that the Project requires Appropriate Assessment (AA) Screening and the AA Screening does not comply with the law. Reference is made to the requirements of the Habitats Directive. Reference is made to Court decisions on the matter including Kelly v An Bord Pleanála, C258/11. Reference is made to obligations under 2011 EC (Birds and Natural Habitats) Regulations referring specifically to the keeping of records. It is also indicated where a turlough is concerned it is necessary to show evidence there is no underground connectivity with the development lands. Reference is also made the CJEU Judgement C323-17 and that all aspects of likely effects must be considered referring to a NPWS document.

In a statement to the FAC, in regard to the granted licence the DAFM indicated that the decision was issued in accordance with the DAFM procedures, SI 191/2017 and the Forestry Act. It also states that DAFM is satisfied that all criteria as outlined in the standards and procedures have been adhered to in making a decision on the application. The statement from the Forestry Inspectorate indicates that the



application was assessed using the relevant AA procedure applicable at the time and there is no impact to a Natura site from the proposal.

An oral hearing was held of which all parties were notified and representatives of the DAFM and FAC sat remotely. The DAFM presented an overview of their processing of the licence and the screening assessment undertaken; that a desk and field assessment was undertaken, and all sites were screened out. At the hearing the FAC raised issues relating to proximity of the site to a watercourse, the setback from the watercourse and the planting of broadleaves in the area in proximity to the watercourse. The issue of turloughs referred to in the grounds of appeal was also addressed and the DAFM indicated that there was no hydrogeological connection. The question of flooding in the immediate area and on the site itself was raised with reference to EPA mapping data and the DAFM in response indicated that based on the field inspection flooding was not an issue and it was indicated that in relation to water quality based on data the bio status and water quality was moderate. The inspector's determination and recommendation were also reviewed by the FAC at the hearing and based on the information before it are considered adequate.

In addressing the appeal, the FAC, in the first instance examined the procedures followed by the DAFM before concluding that EIA is not required in this case. Afforestation is a class of development to which EIA applies and a preliminary screening conclusion in respect of EIA is required. The decision under appeal relates to an afforestation of 2.54 hectares, as part of a forestry operation which is significantly sub-threshold for mandatory assessment under Irish Regulations (S.I. 191 of 2017) which set a threshold requirement for such mandatory assessment at 50 hectares.

In the assessment of the licence the DAFM carried out an assessment of the project under many criteria including cumulative effects, water, soils, species, ecology and visual impacts concluding EIA was not required. The FAC is satisfied that the DAFM had adequate information before it in respect of the characteristics of the proposed development, the location and the type and potential impacts arising from the proposed development to enable a preliminary screening for EIA and considers that there is no convincing reason to doubt the conclusion of the preliminary assessment that EIA is not required. Therefore, the FAC is satisfied that the conclusion that EIA is not required is correct.

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.

In considering the appeal the FAC examined the Appropriate Assessment undertaken by the DAFM including the initial screening. The FAC examined publicly available information from the EPA and NPWS and identified the same fourteen sites as the DAFM within 15km from the proposal. The FAC is satisfied that there was no need to extend the radius in this case. The FAC considered the nature, scale and location of the proposal, the European sites identified and their conservation objectives and the reasons for screening out for Stage 2 Appropriate Assessment provided by DAFM. The DAFM considered each

site in turn and provided the reasons for screening all the sites out for appropriate assessment. Details of other plans and projects were also examined. The FAC is satisfied that the DAFM did not make any serious or significant error in their Appropriate Assessment screening and concurs with the conclusions reached.

Reference is made in the grounds of appeal to where a turlough is concerned to show evidence there is no underground connectivity with the development lands. No specific turlough is referred to. The screening for Appropriate Assessment identified three SACs Coolcam Turlough SAC 000218; Croaghill Turlough Turlough SAC 000255 and Williamstown Turloughs SAC 002296 within 15 kilometres. Information on these turloughs indicates Coolcam and Croaghill Turloughs are hydrologically linked to each other. In relation to the Williamstown Turloughs, the turloughs are in hydraulic continuity and their zone of contribution is small and groundwater flow is to the west. All three are not in close proximity to the site in excess of 6 kilometres and there is no indication of flows overland between the site and the turloughs. There is also a watercourse adjoining the site which flows in an easterly direction and the lands drain towards this watercourse. The turloughs are to the south and overland flows in the area are not in the southerly direction towards the turloughs in question. Based on the information available there is no evidence to suggest underground connectivity to these turloughs from the site.

In relation to hydrological connections the site is within the Suck \_10 River Waterbodies the Water Framework Directive status of which is indicated as good. The FAC is satisfied based on the information available to it, the scale of the development and the measures proposed as set out in the licence that there is no possibility of an adverse impact on any receiving waters.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal, and submissions received including 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. The FAC is thus affirming the decision of the Minister regarding licence CN84450 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 Derek Daly.

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Derek Daly On Behalf of the Forestry Appeals Committee