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9th April 2021

Subject: Appeal FAC 064/2020 regarding licence TFL00332019

Dear [Redacted]

I refer to the 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 TFL00332019 for clearfell and replant of 0.45 ha of at Drumhass, Co. Leitrim was approved by the Department of Agriculture, Food and the Marine (DAFM) on 24th January 2020.

Hearing

An oral hearing of appeals FAC 064/2020, of which all parties were notified, was held by a division of the FAC on 15th February 2021.

In attendance:

FAC Members:	Mr. Myles Mac Donncadha (Chairperson), Mr. James Conway, Mr. Seamus Neely and Mr Derek Daly.
Secretary to the FAC:	Ms. Emma Guerin.
DAFM Representatives:	Mr Seppi Hona and Ms Eilish Kehoe.

Decision

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notice of appeal, submissions made at the oral hearing and all other submissions received, and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to affirm the decision regarding licence TFL00332019.

The licence decision pertains to clearfell and replant of 0.45 ha of at Drumhass, Co. Leitrim. The land is described in the Appropriate Assessment screening form as having a slope which is predominantly flat to moderate (<15%). The site adjoins the public road L1566. It is located in the Upper Shannon WFD catchment (code 26C), the Black river sub catchment (code 26C_2) and in the Black River sub-basin (code

IE_SH_26B040200), for which the nearest receiving waters are Drumshanbo Lough. The waterbody Black (South Leitrim)_030 is shown to flow in and out of the lough and has a status of 'Good' recorded in the 2013-2018 WFD assessment. Sitka spruce is being clearfelled to be replaced with Oak, Birch and other broadleaves.

The project was referred to Leitrim County Council who made a response on 18th May 2019 listing no objection. One submission was received (from the appellant) where this site, amongst many others, is listed as being impossible to licence as such a licence would not comply with EIA and Habitats Directives.

The proposal was desk assessed by the DAFM and the Appropriate Assessment screening of the proposal reviewed the potential for impact on three Natura 2000 sites within a 15km radius of the project. All three sites: Ballykenny-Fisherstown Bog SPA (Site code 004101); Clooneen Bog SAC (Site code 002348); and Lough Forbes Complex SAC (Site code 001818) were screened out on the basis of the unsuitability of the project area for use by any species listed as a qualifying interest of the Natura site, the absence of any aquatic zone within or adjoining the project area and the absence of any significant relevant watercourse(s) within or adjoining the project area. An in-combination assessment document dated 6th January 2020 states that this project, when considered in combination with other plans and projects, will not give rise to the possibility of a significant effect on any Natura site. The licence issued on 24th January 2020 with standard conditions and one stating the requirement to liaise with Leitrim County Council prior to the commencement of works.

One appeal was lodged against the decision (FAC 064/2020) which submitted that the Appropriate Assessment was not carried out lawfully; that records be made available regarding the decision; the requirement to show the catchment to which the proposal relates; the requirement to show lack of hydrological connectivity where the waterbody is a turlough; the requirement to comply with the NPWS referrals standard; the requirement that mitigations may not be considered outside of the context of an Appropriate Assessment (relating to CJEU Case C-323/17); that NPWS made a detailed submission which was ignored; that the development is within 1km of Lough Arrow SAC and at a higher elevation.

In the statements provided to the FAC, the DAFM submitted that the decision was issued in accordance with procedures SI 191/2017 and the 2014 Forestry Act; that the relevant AA procedure was applied in approving this licence and that details of the screening process and an in-combination assessment was can also be found on file. Using the current AA procedure in conjunction with the Habitat & Foraging guidance tables all Natura 2000 sites have been screened out as outlined on file. The statement concludes that the application alone or in combination with other forest and non-forest plans/projects in the area will not have a significant impact on the qualifying interests of the Natura 2000 sites screened as part of the AA.

Prior to the Oral Hearing it became apparent that the in-combination assessment document was not provided to FAC by DAFM due to an administrative error. FAC requested and received the material on the morning of the hearing. During the Oral Hearing Mr. Hona confirmed that the report was received by him on 10th January 2020. Given that appellant did not appear at the hearing and that the parties to the appeal

had not received this material prior to the hearing they were, in the interest of fair procedure and access to all relevant materials, provided with a copy of the in-combination assessment document on 16th February 2021 and offered the opportunity to provide observations on this document in relation to their submitted grounds of appeal before Monday 1st March 2021. No response was received.

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.

Regarding Environmental Impact Assessment (EIA) and related matters in the grounds, the EU EIA Directive sets out in Annex II 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. 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 decision under appeal relates to a licence for the felling and replanting of an area of 0.45 hectares, with replanting being with Birch, Oak and other broadleaves. 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. Due to this application being for clearfell and replanting the EIA regulation, as implemented, does not apply in this case.

In relation to Appropriate Assessment and in accordance with procedures SI 191/2017 and the 2014 Forestry Act the Forest Service is the delegated authority with respect to this process and is within its powers to conduct screening for AA as was conducted in this case. In their Stage 1 screening, the DAFM found three European sites within 15 km of the proposal area, none of which are a turlough, and that there was no reason to extend the zone of influence in this case. The FAC consulted publicly available information from the NPWS and EPA and identified the same three sites. The DAFM in their screening considered each of the three sites in turn and listed the reasons for their screening conclusions. The DAFM also undertook and recorded a consideration of other plans and projects, including forestry and non-forestry projects, and concluded that the project, when considered in combination with other plans and projects, will not give rise to the possibility of a significant effect on any Natura site. The FAC considered all of the evidence before it and is not satisfied that the DAFM erred in their decision to screen out the three Natura sites for Appropriate Assessment. Furthermore, the FAC is not satisfied that a serious or significant error or series of errors were made in the making of the decision regarding Appropriate Assessment.

Regarding the ground of appeal stating that submissions from NPWS was ignored, such a response was neither sought nor received from NPWS. Regarding the grounds of appeal stating the site was within 1km of Lough Arrow SAC and at a higher elevation the FAC finds that the site is approximately 38kms from the named SAC.

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 large black rectangular redaction box covering the signature of Myles Mac Donncadha.

Myles Mac Donncadha On Behalf of the Forestry Appeals Committee