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30<sup>th</sup> April 2021

**Subject:** Appeal FAC537/2020 in relation to felling licence TFL00367419

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 TFL00367419 was issued by the Department of Agriculture, Food and the Marine (DAFM) on the 13<sup>th</sup> July 2020.

#### **Hearing**

An Oral Hearing of appeals FAC537/2020 was held by the FAC on the 1<sup>st</sup> April 2021.

Oral Hearing participants:

FAC:	Mr Des Johnson (Chairperson), Mr Pat Coman, Mr Dan Molloy & Mr Luke Sweetman
Secretary to the FAC:	Mr Michael Ryan
DAFM representatives:	Ms Eilish Kehoe, Mr Eugene Curran

#### **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 TFL00367419.

The licence under appeal is for the clearfell and replanting of 0.7ha of mixed coniferous forest composed of 90% Sitka spruce and 10% Japanese larch in Toughbaun, Co. Cork. The proposed restock species are 60% Pedunculate oak and 40% Additional Broadleaves. The DAFM information states the underlying soils are predominately Podzols in nature and the slope is predominantly flat to moderate (<15%). The application site is in the 20 Bandon-Ilen Catchment, the Ilen SC 020 Sub-Catchment, and the Saivnose\_010 River Sub-Basin. The Saivnose\_010 River waterbody was assigned 'Good' status and deemed to be 'Not at Risk' by the Environmental Protection Agency (EPA) in the Water Framework Directive 2013-2018 reporting period. There are no EPA-mapped watercourses on site. The nearest EPA-mapped watercourse is approximately 540m to the north-west.

The applicant submitted a felling licence application with a Harvest Plan and associated maps. In completing a desk-assessment of the licence application, the DAFM carried out a Stage 1 Appropriate

Assessment (AA) screening that considered the three Natura 2000 sites within 15km of the proposal; Bandon River SAC, Castletownshend SAC, and Myross Wood SAC. All of these Natura sites were screened out for Stage 2 AA for the same reasons:

- 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 hydrological connection.
- The absence of any aquatic zone/significant relevant watercourses within or adjoining the project area.

The DAFM consulted various planning websites along with their internal records in completing an assessment of the potential for the proposal to contribute to a cumulative impact on Natura 2000 sites in the project Townland (Toughbaun). The DAFM deemed that this project, when considered in combination with other forestry and non-forestry plans and projects, “will not give rise to the possibility of a significant effect on any Natura site”.

The Inspector’s Certification states the application was desk-assessed and the project area, together with existing thinning and/or clearfelling of three years or less within a 500m radius constitutes an area of 1.52ha. 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 1.52ha.

The DAFM referred the application to Cork County Council who responded stating they had “no issues to raise.” The licence issued on the 13<sup>th</sup> July 2020 and is exercisable for two years. The licence is subject to relatively standard conditions (a) to (g) plus (h) stating harvesting should take place in dry weather only, and (i) “strictly adhere to the Standards for Felling and Reforestation (DAFM, 2019). These standards replace existing Forest Harvesting and the Environment Guidelines (2000).”

There is one appeal against the licence. The written grounds of appeal were considered in full by the FAC, the following is a summary of the issues raised:

- Before granting the licence, it was necessary for the Minister to establish the legitimacy of the forest. If the Minister has not done so, it is necessary for the FAC to establish the legitimacy.
- The FAC sought further information. Incomplete applications should be returned to the Forestry Service.
- The FAC should not rely on the fact that the National Parks and Wildlife Service did not make an individual objection.
- The decision does not comply with the Habitats, Birds or Environmental Impact Assessment (EIA) Directives.
- There is no need to establish a significant effect to trigger AA - it is merely necessary to determine that there may be such an effect (Kelly v An Bord Pleanála). The AA screening shows that there may be such an effect.
- If the development is within 15km radius of a Natura 2000 site, it is screened in for AA.
- It is not appropriate at screening stage to take account of measures intended to avoid or reduce the harmful effects on a European site.
- A map showing the SACs and SPAs should be submitted.
- Where a waterbody is concerned, it is necessary to examine the catchment map and state which catchment the proposed development is in.
- It is necessary to give details of all forestry activities in the area to determine if relevant thresholds have been reached.



- The FAC, as a public authority, is required to carry out screening for EIA and AA.

The DAFM submitted a response to the grounds of appeal in a written statement to the FAC:

“There are no hydrological connections, no Natura sites, there are no other threats to the environment. The area is to be replanted with broadleaves.”

The FAC held an Oral Hearing on the 1<sup>st</sup> April 2021. The FAC sat remotely, the applicant and the appellant did not participate, and the DAFM representatives both participated remotely. The DAFM detailed their approach to processing the application. The DAFM had assessed the hydrological connectivity between the application site and the Natura 2000 network using the relevant layers in iFORIS and found there to be none. Windblow is a significant issue on the site and represents a risk to public safety. The DAFM Inspector had visited the project lands on the 30<sup>th</sup> March 2021 and the creeping windblow visible in the aerial photography appeared to be getting worse. The FAC queried the number of felling licences listed in the in-combination assessment as being within the same Townland as the proposal when this did not appear to align with the mature forestry visible using publically available aerial photography. The DAFM stated that they had no information as to why that was the case. Responding to the FAC, the DAFM stated that the licence’s period of validity had been limited to two years due to the public safety risk posed by the creeping windblow on the site and its proximity to a public road with houses nearby. The DAFM stated that the issue of windblow is particularly acute with shallow-rooting species like Sitka spruce and other conifers and that the broadleaf species to be planted following clearfell would be much more wind-firm. The FAC queried the reasoning for condition (h) and the DAFM confirmed that there are no relevant watercourses on the site and requiring harvesting to take place in dry weather was more of general condition rather than being linked to a particular vulnerability of the site. The DAFM confirmed that access to the proposal is from the north.

In addressing the grounds of appeal, the FAC noted that the appellant submitted several grounds relating to the duties of the FAC. The appellant also queried the legitimacy of the forest within the application area. The remit of the FAC is to decide if the Minister made a serious or significant error, or series of errors, in deciding to issue felling licence TFL00367419 and to decide if the licence was issued in compliance with fair procedures.

The FAC had regard to the appellant’s submission that the decision “does not comply with the Habitats Directive, the Birds Directive and the EIA Directive.” The FAC observed that the DAFM completed an AA screening of three Natura 2000 sites within 15km of the proposal and that each was screened out for Stage 2 AA with reasons given as 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 hydrological connection, and the absence of any aquatic zone/significant relevant watercourses within or adjoining the project area. The FAC noted that the proposal is within the same WFD Catchment (20 Bandon-Ilen) as all three screened Natura sites but does not share a River Sub-Basin or a Sub-Catchment with any Natura site. There is no evidence before the FAC that there is any hydrological connectivity between the project area and the Natura 2000 network. The DAFM also completed an in-combination assessment of the potential for the proposed development to contribute to a cumulative impact on Natura sites in combination with other plans and projects before concluding that there would be no possibility for the proposal to contribute to such an effect. Based on the information before it, the FAC concluded that the DAFM’s AA screening process was in accordance with the provisions of Article 6(3) of the Habitats Directive and found that there is no convincing evidence that the DAFM made a serious or significant error, or series of errors in their completion of a Stage 1 AA screening. Regarding the appellant’s submission that it is not appropriate at screening stage to take account of measures

intended to avoid or reduce the harmful effects on a European site; the FAC found that, there is no evidence to suggest that the DAFM had done so in this instance.

The appellant did not specify which element(s) of the Birds Directive they contend the decision to grant felling licence TFL00367419 does not comply with. In these circumstances, the FAC concludes there is no related reason on which to affect the decision.

In considering the appellant's grounds related to the EIA Directive, the FAC noted that the 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 Regulations, in relation to forestry licence applications, require assessment under 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 clearfelling and replanting of an area of 0.7ha. The FAC does not consider that the proposal falls within the classes included in the Annexes of the EIA Directive or considered for EIA in Irish Regulations.

In the circumstances outlined above, and based on the evidence before it, the FAC concluded that the DAFM did not make a serious or significant error, or series of errors, in their decision to issue TFL00367419 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