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26th April 2021

Subject: Appeal FAC615/2020 in relation to felling licence TFL00449219

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 TFL00449219 was issued by the Department of Agriculture, Food and the Marine (DAFM) on the 22nd July 2020.

Hearing

An oral hearing of appeals FAC615/2020 was held by the FAC on the 25th March 2021.

Oral Hearing Attendees:

FAC:	Mr Des Johnson (Chairperson), Mr Derek Daly & Mr Luke Sweetman
Secretary to the FAC:	Mr Michael Ryan
Applicant:	[REDACTED]
DAFM representatives:	Ms Eilish Kehoe, Mr Jhan Crane

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 TFL00449219.

The licence under appeal is for the thinning and subsequent clearfell and replanting of 21.02ha of Norway spruce, Sitka spruce and Lodgepole pine across six plots at Drumcarban, Co. Cavan. The restock species are a combination of Norway spruce and Sitka spruce with each plot containing 10% Additional Broadleaves. The DAFM information states the underlying soils are predominately Podzols in nature and the slope is predominantly flat to moderate (<15%). The site is in the Erne Catchment, Erne SC 030 Sub-Catchment, and the Erne 070 River Sub-Basin. The Erne 070 Waterbody was assigned 'Moderate' status and deemed 'At Risk' by the Environmental Protection Agency in the Water Framework Directive 2013-2018 reporting period with agriculture and urban waste water identified as significant pressures.

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. All of these sites were screened out for Stage 2 AA for the following reasons:

- **Lough Oughter and Associated Loughs SAC**
 - “Due to other factors: the project area is 3.3km from the SAC, has no hydrological connection and is beyond the zone of influence of any of the Qualifying Interests (ref Habitats Table).”
- **Lough Oughter SPA**
 - “The unsuitability of the project area for use by any species listed as a Qualifying Interest of the Natura site. The project area is 3km from the SPA and is beyond the foraging range of any of the Qualifying Interests (ref Bird Table).”
- **Lough Sheelin SPA**
 - “The unsuitability of the project area for use by any species listed as a Qualifying Interest of the Natura site. The project area is 14.5km from SPA and is beyond the foraging range of any of the Qualifying Interests.”

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 general vicinity of the Erne_070 River Sub-Basin (which currently has 7% forest cover). 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 the Natura sites listed above.”

The DAFM referred the application to Cavan County Council, the National Parks and Wildlife Service (NPWS) and the DAFM Archaeologist. The NPWS did not respond. The County Council responded advising the applicant/Forester in relation to road maintenance, road safety, drainage, liaising with adjoining landowners and resolving issues that arise in tandem with the DAFM, managing surface water run-off, clearing hedges to provide sight-lines, and liability of the applicant/Forester for costs incurred by the Local Authority for any damage or nuisance caused by the proposal. The DAFM Archaeologist responded with a report including annotated map and specific conditions to protect five Recorded Monuments/SMR sites contiguous to Plot 3 & Plot 8.

The licence issued on the 22nd July 2020 and is subject to relatively standard conditions (a) to (g) plus (h) detailing the archaeological conditions 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 a licence, it was necessary for the Minister to establish the legitimacy of the existing forest. The FAC must now do this.
- By requesting Further Information, the FAC has upheld the appeal. Incomplete decisions should be returned to the Forestry Service.
- The FAC should not rely on the fact that the NPWS did not make an individual objection.
- As the appellant is refused access to iFORIS, it is not possible for him to make an informed appeal.
- The decision does not comply with the Habitats EIA or Birds Directives or basic NPWS guidelines.
- It is merely necessary to establish that there may be an effect to trigger AA.
- If the development is within 15km of a Natura site it has been 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
- If the development is in a different catchment to a Natura site, the name of the catchment should be stated.
- A map showing SACs and SPAs should be attached.
- Details of all forestry in the area should be stated.
- It is the duty of the FAC to carry out a full AA screening and EIA screening.

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

The grounds of appeal have been read and considered. The application for Felling Licence TFL00449219 was screened for AA according to current AA Procedure and Standard Operating Procedure. The proposal was field and desk assessed to determine any potential effect on a Natura 2000 site. The project area is not hydrologically linked to any Natura 2000 site. Natura 2000 sites within 15km of project area are:

- Lough Oughter SAC (3.3km away)
- Lough Oughter SPA (3km away)
- Lough Sheelin SPA (14.5km away)

The project area is unsuitable for any of the species listed as Qualifying Interests (as per the DAFM Habitat Table and Bird foraging Table). The project area has no pathway connecting it to any Natura 2000 site, it is not a suitable habitat for any of the Qualifying Interests and the project area is beyond the foraging range of any of the Special Conservation Interests. "The project area will have no effect on any Natura 2000 site and the original approval decision should remain unchanged."

The FAC held an Oral Hearing on the 25th March 2021. The FAC sat remotely, the appellant did not participate, and the applicant and the DAFM both participated remotely. The DAFM detailed their process in considering and subsequently approving the application. The application was field and desk assessed. The DAFM had checked the hydrological connectivity between the application site and the Natura 2000 using the relevant layers in iFORIS and found no hydrological connection. A field inspection was carried out on the 23rd June 2020 and although some areas were difficult to traverse, most plots were walked and all plots were inspected from the outside at least. Responding to FAC questions the DAFM stated that, following an AA screening which cross-referenced the DAFM's Habitats and Birds Tables, and considering the distances involved and lack of hydrological connection, all of the screened Natura sites had been screened out and that the conditions on the licence were not to mitigate potential impacts on Natura sites. They stated they had field inspected the proposal because of its relatively large area and stated there is no hydrological connection between the project lands and the Natura network and that the water quality guidelines were a safeguard to protect water quality in the adjacent lakes. The DAFM responded to a FAC query stating the 10% broadleaf component of the restock species is the minimum requirement but that additional broadleaves may be planted along setbacks and that this depends on the applicant. They stated that the proposed development is quite fragmented and indicated the species selected were correct for the site type. The DAFM stated there are some small, localised wet areas throughout the proposal but that this was typical of Gley soils and the trees were growing productively. The applicant stated that the percentage of broadleaves to be planted complied with minimum standards and that they had no comments to make on the grounds of appeal. In response to FAC questions about the County Council's referral response, the DAFM stated that adhering to best forest practice would deal with majority of their requests and the DAFM did not deem it necessary to attach additional conditions to the licence in this instance. The FAC queried the applicant

regarding potential drainage issues and the presence of a wet area in the vicinity of the area referred to on historic maps as the Black Lough. The applicant stated that there are no issues with drainage as this area had a drain installed many years ago. In their concluding remarks the DAFM stated that they considered the application to be in order and that the AA process, raised in the grounds of appeal, had been carried out correctly.

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 TFL00449219 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 Environmental Impact Assessment Directive or the basic guidelines of the NPWS." 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 including the lack of hydrological connection, the unsuitability of the project area for use by any species listed as a Qualifying Interest of the Natura sites, and the distance of the proposal from the Natura sites.

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 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 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 21.02ha. 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 information 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 TFL00449219 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 forest practice.

Yours sincerely,

A black rectangular redaction box covering the signature of Luke Sweetman.

Luke Sweetman on Behalf of the Forestry Appeals Committee

