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11<sup>th</sup> January 2021

**Subject:** Appeal FAC 241/2019 regarding licence TFL00278019

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 TFL00278019, for felling and replanting of forest on 44.56 ha in the townlands of Sranacrannaghy, Drummury and Fenagh, Co. Leitrim, was approved by the Department of Agriculture, Food and the Marine (DAFM) on the 20<sup>th</sup> of August 2019.

#### **Hearing**

A hearing of the above appeal was held by the FAC on 16<sup>th</sup> December 2020.

FAC Members in attendance: Mr. John Evans (Deputy Chairperson), Mr. Vincent Upton, Mr. James Conway, and Mr. Seamus Neely.

#### **Decision**

Having regard to the evidence before it, including the record of the decision by the DAFM, the notices of appeal, and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to set aside and remit the decision of the Minister regarding licence TFL00278019.

The licence pertains to the felling and replanting of forest on 44.56 ha in three contiguous plots of 16.8 ha, 8.2 ha, and 19.56 ha, in the townlands of Sranacrannaghy, Drummury and Fenagh, Co. Leitrim. The forest is currently composed of Sitka Spruce. Replanting is to be of Sitka spruce (80%), Broadleaves (10%) with areas of open space (10%). The application was dated the 17<sup>th</sup> of January 2019. The application was submitted on a DAFM form: *Felling Application 1 (15<sup>th</sup> December 2017)*.

An Inspector's Certification Report, dated the 23<sup>rd</sup> of July 2019 indicates that a Field & Desk inspection was carried out on the 23<sup>rd</sup> of July 2019. This describes the predominant soil type underlying the project area as predominantly podzols in nature, with a predominantly flat to moderate (<15%) slope. It notes that the project area is crossed by/adjoins an aquatic zone. The report records the site as not being located

within a 0-0.5 Km buffer zone of an NHA, SAC or SPAC. The report also records the site as not being located within a 3 km buffer zone upstream of, and hydrologically connected to an NHA, SAC, or SPA. The report does record the area proposed for felling as containing, adjoining, or lying with 200m of a listed archaeological site or monument. The report notes referrals to the National Parks and Wildlife Service and Leitrim County Council on the 11<sup>th</sup> of February 2019. Responses are noted on the 8<sup>th</sup> of May 2019 and the 27<sup>th</sup> of February 2019, respectively.

The report records an Appropriate Assessment (AA) Screening decision to screen out the application on the basis that the zone of influence centred on the application does not overlap with any Natura site resulting in spatial separation. The report also records a decision to screen out the application for Environmental Impact Assessment. The EIA assessment section notes the need for conditions relating to the protection of archaeological features.

The response from Leitrim County Council noted above is on the file provided to the FAC. This recommends the inclusion of two conditions relating to the prior approval of transport plans by the local authority, and the potential imposition of bonds and weight limits to protect local authority roads. The response from NPWS noted above is not on the file provided to the FAC.

Observations forwarded by an archaeologist in the Forestry Inspectorate, dated the 17<sup>th</sup> of July 2019 are on file. These can be seen to have been sent to the National Monuments Service for observation and were agreed to by that body. The observations contain recommendations for licence conditions including adherence to a number of guideline documents and a number of site-specific conditions.

An AA Screening document, for application licence number TFL00331519 for an area of 4.77ha, is included in the documents provided to the FAC. Based on the information before it an appropriate assessment screening of the likely significant effects on European sites of TFL00278019 itself or in combination with other plans or projects was not recorded. An undated and unsigned statement of facts was provided to the FAC that stated that the Department is satisfied that all criteria in its standards and procedures have been adhered to in making a decision on the application. This confirms the administrative details of the licence (TFL00278019) as outlined above. It notes that the original licence application was the subject of a submission from one party on the 1<sup>st</sup> of the March 2019. This submission is not included in the file provided to the FAC. A notice of decision notifying that party is on file dated the 20<sup>th</sup> of August 2019.

The FAC consulted with publicly available mapping provided by the Environmental Protection Agency, the OSI, the Forest Service, and other on-line services. The site is bound on its northern edge by the R287 road and on its western side by a small local road. No marked waterbody can be observed to enter or bound the project site however two branches of the Bonet\_050 waterbody lie to the north (ca. 480m) and south (ca. 360m) of the site. The site can be seen to be part of the Bonet\_SC\_020 sub catchment and the Sligo Bay & Drowse\_35 catchment as designated for the Water Framework Directive. The northern branch of the River Bonet mentioned above forms part of the Lough Gill SAC [1976]. A number of other European



sites can be observed within 15km of the application site. These include, but are not limited to, the Boleybrack Mountain SAC [2032] is at an approximately 5.7km direct distance. That SAC is in the same sub-catchment, albeit upstream; The Unshin River SAC [1898] is approximately 14.3km direct distance from the site. Although this SAC is in the same WFD Catchment, there appears to be no hydrological connection; The Ballysadare Bay SPA [4129] is just over 17km direct distance from the site, while the Cummeen Strand SPA is just over 16km direct distance from the site. The qualifying interests for these SPAs are waterbirds associated with maritime and coastal habitats. The Sligo/Leitrim Uplands SPA [4187] is just over 13km direct distance from the site. The qualifying interests for this site are Peregrine and Chough.

The decision to grant the Licence is subject to one appeal. The grounds of appeal include, in summary:

1. That the licence is for a large felling coupe, with inadequate protections for landscape and biodiversity.
2. That there were errors and inaccuracies in the Inspector Certification.
3. That the decision to screen out for Environmental Impact Assessment was not valid.
4. That the Appropriate Assessment Screening process is incorrect and does not adhere to the requirements of the Habitats Directive.

In addressing the grounds of appeal, the FAC considered each in turn.

In considering the first ground of appeal noted above, that in granting a licence for a large felling coupe the DAFM had provided inadequate protections for landscape and biodiversity, the FAC had regard to references made in the appeal to the *Code of Best Forest Practice*, published by the Department of the Marine and Natural Resources in 2000. The *Forestry Standards Manual*, published by DAFM in 2015, states that it complements and should be read in conjunction with the *Code of Best Forest Practice – Ireland* (referred to below as “the code”) and the *Irish National Forest Standard*. The *Forestry Regulations 2017* (S.I. No. 191 of 2017) require the Minister, in Section 20(1)e to have regard to “any guidelines, codes of practice and standard for good forest practice”.

The appellant noted that one of the felling periods provided for in the application and licence is for 25ha. The FAC verified that this is the case, as the licence states that Plots No.1 (16.8ha) and Plot No.2 (8.2ha) were proposed for 2019, an area that totals 25ha. A further 19.56ha are to be felled in 2024. The appellant notes that the code states that when considering coupes of over 25ha, consideration should be given to scheduling clear-fells so that adjoining reforestation areas are well established, and that the impact of visual impact on the landscape should be considered with reference to the prominence of the site. The appellant notes that the site under consideration is on an elevated site.

The FAC notes that the site is not in an area designated for high visual amenity, and that the appellant does not indicate any specific visual impact other than prominence on the local landscape. While elevated, contour mapping from the OSI indicates that the highest point on the site is ca. 80m at the sites southern

extent compared to ca. 30m on the R287. The local landscape is characterised by drumlins, with multiple locations with similar or higher elevations being observed within 1.5km. Having reviewed OSI mapping and local road imagery, the FAC are satisfied that visual impact will be confined to local roads in the immediate vicinity of the site and a short stretch of the R287 as it passes to the north and west of the site.

In considering the second ground of appeal noted above, that there were errors and inaccuracies in the Inspector Certification, the FAC reviewed the certification in question. The FAC concurs with the appellant that errors have been made, particularly in relation to the proximity of the Lough Gill SAC, which includes the Bonet River (as far as, but not including, Glenade Lough). This also supports the appellant's contention in the fourth ground of appeal. The FAC considers that the information on which the decision to screen out for Appropriate Assessment as required by the Habitats Directive is flawed.

In considering the third ground of appeal the FAC noted that the EU EIA Directive sets out in Annex I a list of projects for which EIA is mandatory and that 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, 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 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 similarly not covered by the Irish regulations (S.I. 191 of 2017).

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal, in addition to submissions made by parties to the appeal. In the above circumstances, the FAC is satisfied that there was a serious or significant error or series of errors in the making of the decision to grant the licence. As a result, the FAC concluded that the decision of the DAFM regarding TFL00278019 should be set aside and remitted to the Minister to carry out a screening for appropriate assessment under Article 6 of the Habitats Directive before a new decision is made.



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John Evans On Behalf of the Forestry Appeals Committee