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29th June 2021

**Subject:** Appeal FAC 267/2020 regarding licence TFL00318319

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.

Licence TFL00318319 is for the thinning/felling of forestry of 12.17 hectares in area at Clonnagashel, Co Mayo which was approved by the Department of Agriculture, Food and the Marine (DAFM) on the 22<sup>nd</sup> May 2020 subject to conditions.

#### Hearing

An oral hearing of appeal FAC 267/2020 was held by a division of the FAC on the 24<sup>th</sup> June 2021.  
In attendance:

Department Representative(s); Ms Eilish Kehoe; Mr David Ryan.

Applicant; [REDACTED]

Appellant; [REDACTED]

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

Secretary to the FAC Mr Michael Ryan.

#### Decision

Having regard to the evidence before it, including the record of the decision 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 FAC has decided to affirm the decision of the Minister regarding licence TFL00318319.

#### Licence

The licence pertains to the thinning/felling of forestry of 12.17 hectares at Clonnagashel, Co Mayo. The site has 22 plots which are in eight distinct non-contiguous parcels with a wide range of broadleaf species as listed in the application and which are located within a golf course. The project is part of a woodland improvement scheme to provide for continuous forestry cover, the forest area in question is

planted as a high value aesthetic project and the thinning operation as proposed is to manage the forest to promote natural regeneration. The project site is within the River Sub Basin the ROBE\_050 (River Waterbody status for the ROBE\_050 is moderate for the 2013-18 assessment period) and in terms of risk is indicated as at risk.

The inspector certification refers to predominant soil type underlying the project area is podzols. The slope is predominantly flat to moderate. The project area is crossed by or adjoining an aquatic zone(s). The vegetation type(s) within the project area comprises WD1 woodland. Gley soils predominate.

The licence application was referred to Mayo County Council who in a response indicated no objections to the licence. The licence was also referred for an archaeological review and the archaeologist recommended conditions to be included in a grant of the licence.

An Appropriate Assessment screening was carried out by DAFM and recorded on the file. Eighteen Natura sites were found to be within 15kms of the project site, namely Ardkill Turlough SAC 000461; Ballinafad SAC 002081; Carrowkeel Turlough SAC 000474; Ciyard Kettle Holes SAC 000480; Greaghans Turlough SAC 000503; Kildun Souterrain SAC 2320; Kilglassan Caheravoostia Complex Turlough SAC 000504; Lough Carra SPA 004051; Lough Carra/ Mask Complex SAC 001771, Lough Corrib SAC 00197; Lough Corrib SPA 004042; Lough Mask SPA 004062; Mocorah Lough SAC 001536; Moore Hall (Lough Carra) SAC 000527, River Moy SAC 002298; Shrute Turlough SAC 000525; Skealoghan Turlough SAC 000541 and Towerhill House SAC 002179. All sites were screened out referring to distance; the nature of the project; the project area being downstream of the Natura Site and the absence or lack of hydrological connection. The overall screening conclusion was that there was no likelihood of a significant effect on any European site, and Appropriate Assessment was not required.

In-combination assessments dated with a reference to the week of 5<sup>th</sup> March 2020 are on the file indicating no effects on any Natura site concluding that the project does not have a potential to contribute to any effects when considered in-combination with other plans and projects.

The licence was issued on the 22<sup>nd</sup> May 2020 subject to conditions with specific condition relating to archaeology.

### **Appeal**

There is one appeal against the decision to grant the licence.

The grounds of appeal contend that the decision does not comply with the Habitats Directive, the Birds Directive and the Environmental Impact Assessment Directive; in relation to AA screening, it is sufficient to determine that there may be an effect and all sites within 15 km must be screened in; reference is made to case C323-17 referring in particular to Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that, in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the



screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site; that conclusion is supported by the fact that a full and precise analysis of the measures capable of avoiding or reducing any significant effects on the site concerned must be carried out not at the screening stage, but specifically at the stage of the appropriate assessment and in that regard, the Court's case-law emphasises the fact that the assessment carried out under Article 6(3) of the Habitats Directive may not have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the proposed works on the protected site concerned; a map of all Natura Sites must be shown; in relation to screening for Environmental Impact Assessment, it is necessary to give details of all forestry in the area and show that the cumulative afforestation does not exceed 50ha and also it is necessary to give the total km of the forest roads in the area and show that no roads which are not included in the application will be needed to carry out this development, that includes thinning and clearfell and reference is made to the duties of the FAC to carry out full AA Screening and full EIA Screening referencing Case C-254/19 in this regard.

In a statement to the FAC, the DAFM indicated that the decision was issued in accordance with their procedures, S.I. 191/2017 and the 2014 Forestry Act. The Statement from the Forestry Inspectorate sets out the criteria for the assessment of the licence and that approval was issued in accordance with all procedures at the time of issue. The project was screened out for the requirement for Appropriate Assessment using the Annex I Habitat table (18 December 2019) and the Bird Foraging Table (06 January 2020) and the Annex II Species Table (30 January 2020) and the screening information is on file.

In the course of the oral hearing clarification was sought by the FAC in relation to the nature of the thinning operation, it was indicated that no operations had occurred to date, that the majority of the felling operation would occur within a short period to coincide with operations planned under the Woodland Improvement Scheme, that the forestry which is predominantly broadleaf was for aesthetic purposes and was not a commercial forest, that no hydrological connection arises and existing buffers would be maintained; that the method of felling would not involve the use of heavy machinery and the thinned timber would be retained and used on site. It was also indicated that the site was within a golf course where the underlying gley soils were modified by the development works associated with the development of the golf course.

In addressing the grounds of appeal, the FAC considered the requirements of the Habitats and EIA Directives, the completeness of the assessment of the licence application, whether there was an adequate assessment of cumulative effects and an examination of the procedures applied which led to the decision to grant the licence.

In considering the 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. The Irish Forestry Regulations 2017, in relation to forestry licence applications, require the compliance with the EIA process for applications relating to afforestation which involve 50 hectares or more and the

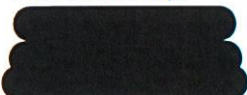
construction of a forest road of a length greater than 2000 metres and any afforestation or forest road below the specified parameters where the Minister considers such development would be likely to have significant effects on the environment. The proposal is for the thinning/ felling of 12.17 hectares to facilitate the management of an aesthetic broadleaf forest which does not involve deforestation. Having regard to the record of the decision and the submitted grounds, submissions at the oral hearing and the nature, scale and location of the proposal, the FAC is satisfied that the DAFM did not err in its decision concerning EIA.

In considering the appeal the FAC examined the Appropriate Assessment Screening undertaken by the DAFM as it related to the thinning of 12.17 hectares of forest. The FAC examined publicly available information from the EPA and NPWS and identified the same eighteen sites as the DAFM within 15km from the proposal and 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 provided by the DAFM for screening them out. 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 proposed works are located outside of any European site and there is no evidence of a pathway of effects to a European site. Neither is there evidence of protected habitats or species on the site. The FAC is satisfied that the DAFM did not make any serious or significant error in their decision regarding Appropriate Assessment and concurs with the conclusions reached.

In relation to potential hydrological impacts on Natura 2000 sites and on water quality generally it is noted that no specific drainage works are required to facilitate this project. The FAC examined this issue and from an assessment of the topography of the site and the pattern of contours and slopes, mapping and aerial imagery of the area concluded and is satisfied based on the submissions received that the proposed project will not impact on any Natura 2000 sites or any receiving waters.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal. 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 TFL00318319 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



