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29 June 2021

**Subject:** Appeal FAC 680/2020 regarding licence TFL00410419

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 14A (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 TFL00410419 for felling of 6.4ha in Gubaveeny, Co. Cavan was approved by the Department of Agriculture, Food and the Marine (DAFM) on 13 August 2020.

#### Hearing

An oral hearing of appeal FAC 680/2020 of which all parties were notified, was held by a division of the FAC on 17 June 2021.

#### In attendance

FAC Members:	Mr Des Johnson (Chairperson), Mr Seamus Neely, Mr Luke Sweetman and Mr Dan Molloy
Secretary to the FAC:	Mr Michael Ryan
Appellants:	[REDACTED]
Applicant:	[REDACTED]
DAFM Representatives:	Ms Eilish Kehoe and Mr Seppi Hona

#### Decision

The Forestry Appeals Committee (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 submissions/observations, before deciding to affirm the decision to grant the Licence (TFL 00410419).

The proposal is for the clearfelling and restocking of a stated site area of 6.40ha at Gubaveeny, Co. Cavan. The existing trees are 100% Sitka spruce and proposed restocking is for 90% Sitka spruce and 10% Broadleaves. Restocking measures proposed include installation of silt traps and barriers,

blocking drains/slow-water drains, utilising brash along extraction routes, and excluding machinery in areas adjoining aquatic zones, water abstraction points and water-related hot spots. A document titled 'Harvest Plan' is submitted with application documentation.

The DAFM referred the application to Cavan County Council and the National Parks and Wildlife Service (NPWS). There is no response recorded from either the County Council or the NPWS.

The Inspector's certification states that the soils are predominantly podzols and the slope is predominantly flat to moderate. The project lands do not contain or adjoin an aquatic zone. Natura 2000 sites within a 15km radius of the project lands are screened for Appropriate Assessment. Four designated sites are identified - Boleybrack Mountain SAC, Corratirrim SAC, Cuilcagh-Anierin Uplands SAC and Lough Gill SAC. All are screened out for reason of the absence of any aquatic zone within or adjoining the project area, and the absence of any relevant watercourse. The certification notes that the approximate percentage digitised forest area licensed for clearfell or thinning within 5km is 2.01%. The site is not within a potentially acid sensitive area and not sensitive to fisheries. There would be no effect on FWPM populations. This is not a Prime Scenic Area as per the County Development Plan and no High Amenity Landscape considerations arise. The site is not within 3km upstream of any European or Nationally designated site, there would be no impact on any Way-Marked Way, no impact on any densely populated area and no impact on an area commonly used by the general public for recreation. The project lands are within 200m of a listed archaeological site or monument.

The licence was issued on 13.08.2020 and is exercisable for 10 years. It is subject to standard conditions with additional archaeological requirements and a condition requiring strict adherence to Standards for Felling & Reforestation (October 2019). The licence approval is for restocking with 90% Sitka spruce and 10% Additional Broadleaves.

There is a single appeal against the decision to grant the licence. In summary, the grounds of appeal contend that there is a breach of Article 4(3) of the EIA Directive. This is a class of development covered under Annex II. A Number of criteria set out in Annex III do not form part of the screening and have not been taken into account. The DAFM failed to carry out an adequate EIA screening of the proposed development. The afforestation of these lands was carried out without any screening for the requirement for EIA. No licence should be granted until a retrospective assessment is carried out. There is a requirement under EU law for retrospective assessment. The licence and associated operations threaten the achievement of the objectives for the underlying waterbody or waterbodies. Clear-felling has the potential to impact on water quality. The Stage 1 Appropriate Assessment conclusion is not legally valid. A potential source of impact on a designated site has not been identified. The Precautionary Principle should apply. The Harvest Plan does not represent an accurate recording of the features required in the Interim Standard for Felling and Reforestation. There is insufficient detail and clarity in the In-combination information. There should be a standard condition requiring notification to the Minister at the commencement and conclusion of operations. The licence conditions should include stringent and enforceable conditions regarding notification of appropriate bodies, groups and the public of the intention to spray any chemicals. Licence conditions do not provide for the strict protection of all wild birds during periods of breeding and rearing consistent with the requirements of the Birds Directive. Licence conditions do not provide for the strict protection of Annex IV animal species in their natural range.



In response, the DAFM state that the proposal was desk audited and a field inspection was carried out. All criteria were fully adhered to and approval is in order.

An Oral Hearing was convened on 17 June 2021 and all parties were invited to attend. In the particular circumstances of this appeal, the FAC invited the NPWS to attend but they were not in attendance. The applicant, appellant and the DAFM participated remotely. The DAFM detailed the procedures it adopted in coming to the decision to grant the licence. The application had been desk assessed and a field inspection was carried out. In-combination projects were considered in the making of the decision to grant the licence. The FAC queried the status of a submission indicated as being from the NPWS, together with a separate redacted annotated map. The DAFM confirmed that no referral submission had been received by the DAFM or considered in the making of the decision. The appellant indicated that he had obtained the document through an AIE request and that he forwarded it, together with the redacted annotated map, to the FAC. In discussions, the appellant accepted that the documents had not been before the DAFM and that, as such, could not have been considered in the making of their decision. In regard to this issue, the appellant stated that no error had occurred in the making of the decision by the DAFM. The appellant stated that his participation at the Oral Hearing was without prejudice to his view that the FAC was not an independent and impartial body for the consideration of the appeal. While the NPWS document was not a referral submission to the DAFM, the contents of the document should be considered by the FAC as part of the appeal process. The proposed development was within 500-550m, and within colonisation distance of an SAC. The Cuilcagh Mountains SAC was within a 15km radius but had not been screened for Appropriate Assessment by the DAFM. The appellant questioned if projects north of the border, and which could have impacts, were considered. The licence period was for 10 years, and it was difficult to see how the DAFM could ensure compliance when it was not known when felling would occur. The applicant stated that the subject forestry was planted in 1991. It had been badly damaged in a storm in about 2018 with a lot of windblow. Trees were left on the ground for over two years and were now worthless. The aim was to clear the trees and restore a viable forest on these lands. The applicant had health and safety concerns if the trees were not removed. In addition, 'pumping' could arise whereby trees rock from side to side loosening the sub-soil and leading to possible sedimentation. Asked why the proposal was to restock with predominantly Sitka spruce (same as the existing stock) on what appeared to be a problem site, the applicant stated that modern practices and maintenance would address problems that had previously occurred. Asked about aquatic zones, the applicant stated that there is one approximately 680m to the east and another approximately 400m to the north of the project site. There is a stream along the southern boundary, but this is small and does not contain water during dry periods. In addition, there are some field drains present. Colonisation would not be a problem arising from the proposed development. There is creeping windblow on the site and trees in the north-eastern corner of the lands had underperformed. The applicant contended that the subject lands were well suited to this type of forestry and would produce a high yield. The appellant stated that, while forestry practices may have changed, consideration must be given to climate change and the likelihood of more frequent storms in the future. UK and Norwegian research indicated that colonisation can be a significant issue arising with Sitka spruce plantations, and the appellants own research indicated that colonisation could occur for a distance of up to 1300m. In this case there is a source-pathway- receptor.



At the outset, the FAC considered the status of the letter on headed notepaper purporting to represent the NPWS views on the proposed development. The FAC is satisfied, based on the information collected, that this document was not submitted to the DAFM by the NPWS, and that there was no NPWS referral submission before the DAFM at the time of the making of the decision to grant the licence. The redacted document, and a separate redacted annotated map, were forwarded to the FAC by the appellant. In these circumstances, the FAC finds no reason to consider that there was any significant or serious error in the making of the decision to grant the licence by reason of not considering the 'NPWS' document. The NPWS were invited (at short notice) to attend the Oral Hearing but were not present to express any views on the decision to grant the licence.

Addressing the written grounds of appeal, the FAC considered, in the first instance, the appellant's contention that the licence granted is in breach of the provisions of the EIA Directive. The proposal is for the clearfelling and restocking of a stated site area of 6.40ha. This proposal is part of a forestry management project with no change in land use. The FAC noted that felling and restocking is not a class of development included in either Annex I or Annex II of the EIA Directive or referred to in the transposing Regulations. Furthermore, the proposed development does not involve any works which, by themselves, would constitute a class of development covered by the EIA Directive. In these circumstances, the FAC concluded that the decision is not in breach of the provisions of the EIA Directive. The appellant contends that the existing forestry was planted without any screening for EIA having been carried out and that retrospective screening is necessary at this stage. Information provided at the Oral Hearing indicated that the existing forest was planted in 1991. There is no information before the FAC that this was initial afforestation or replacement of existing forestry, or if the forestry, the subject of the current proposal, is in any way, unauthorised. In any event, the FAC noted that enforcement is a function of the DAFM, who are provided with the necessary legislative powers. Based on the information before it on this issue, the FAC finds no reason to conclude that there was any significant or serious error made in the taking of the decision to grant the licence.

The appellant contends that the licence and associated operations threaten the achievement of the objectives for the underlying waterbody or waterbodies as clear-felling has the potential to impact on water quality. The FAC noted that the Inspector's certification indicates that there is no aquatic zone within or adjoining the site and no relevant watercourse. At the Oral Hearing, the applicant stated that there is an aquatic zone c.680m to the east and another c.400m to the north. The appellant has not provided any convincing specific evidence to show reason how the proposed development would threaten the achievement of the objectives of the underlying waterbody. Based on the information before it, the FAC finds no basis for this ground of appeal.

The appellant contends that the 'Harvest Plan' does not accurately record features on the site. The FAC considers that the 'Harvest Plan' is an operational document for the operators of the proposed development, and that all operations carried out must comply with the terms of the licence granted. It is argued that there is insufficient detail contained in the in-combination information, but the appellant does not provide specific details of other plans or projects that should have been included and the reasons for their inclusion. The appellant contends that the licence conditions should provide for the strict protection of species of wild birds and Annex IV species but fails to provide specific details of species of wild birds or Annex IV species present on the project lands or give convincing reasons to show how the proposed development would be likely to give rise to adverse effects on them. In these



circumstances, the FAC finds no reason to conclude that additional conditions should be attached to the licence. The appellant contends that the licence should include stringent and enforceable conditions regarding notification of appropriate bodies, groups and the public of the intention to spray any chemicals. The FAC noted that the spraying of chemicals is controlled by way of statutory instruments and found no reason to attach additional conditions in respect of the spraying of chemicals.

The FAC considered the procedures adopted by the DAFM in respect of the requirements of the Habitats Directive. The DAFM identified four Natura 2000 sites within a 15km radius for screening and the FAC noted that the sites are Boleybrack Mountains SAC (785m separation), Corratirrim SAC (5376m separation), Cuilcagh-Anierin Uplands SAC (5754m separation) and Lough Gill SAC (11119m separation). Having regard to the nature and scale of the proposed development, the FAC considered that this was reasonable. The FAC considered the qualifying interests and conservation objectives for each of the sites and noted the DAFM reasons for screening the sites out for Stage 2 Appropriate Assessment. The FAC noted that the Cuilcagh Mountains SAC is approximately 7km separated to the south east of the project lands. It has an area of 2744ha, and the conservation objectives relate to Blanket Bogs, Alpine & Boreal Heaths, European Dry Heaths, Natural Dystrophic lakes and Ponds, Northern Atlantic Wet Heaths, Siliceous Rocky Slopes and Siliceous Scree. Having regard to the nature and scale of the proposed development, the separation distance, the absence of any aquatic zones within or adjoining the project lands and the absence of any relevant watercourse, and the orientation of the project lands relative to Cuilcagh Mountains SAC, the FAC concluded that the proposed development would not have any significant effect on the designated site having regard to the conservation objectives, and there is no convincing evidence to conclude that Stage 2 Appropriate Assessment should have been required in respect of the Cuilcagh Mountains SAC. In these circumstances, the FAC concluded that no significant or serious error occurred in the making of the decision by the Minister. Based on the information before it, the FAC concluded that the procedures adopted by the DAFM before the making of the decision were generally consistent with the requirements of Article 6(3) of the Habitats Directive and that the overall screening conclusions were sound.

The FAC concluded that there was no significant or serious error made by the Minister and that the decision was made in compliance with fair procedure. 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

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Des Johnson, on behalf of the Forestry Appeals Committee

