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8<sup>th</sup> July 2021

**Subject:** Appeal FAC 727/2020 relating to Licence TFL00451520.

Dear [REDACTED]

I refer to the 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 (as amended) has now completed an examination of the facts and evidence provided by all parties to the appeal.

#### **Licence**

The licence is for 30.36 Ha. of forest thinning at Glendine, Co. Offaly. The application was submitted to the Department of Agriculture, Food and the Marine (DAFM) on 07/01/2020. There were no third party submissions on the licence application. The licence was approved by the DAFM on 28/08/2020 with conditions and included mitigation measures relating to the Hen Harrier.

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

#### **Hearing**

An oral hearing of the above appeal, of which all parties were notified, was held by the FAC on 23<sup>rd</sup> of June 2021.

FAC Members:	Mr. Seamus Neely (Deputy Chairperson), Mr. John Evans, Mr. Vincent Upton and Mr. Iain Douglas.
Appellant:	[REDACTED] (Did not attend).
Applicant:	[REDACTED] (Did not attend).
DAFM	Ms. Eilish Kehoe, Mr. Ciaran Nugent.
Secretary to the FAC	Ms. Marie Dobbyn.

#### **Decision**

Having regard to the evidence before it, in particular the submissions at the oral hearing given by the DAFM, the record of the decision by the DAFM, the notice and grounds of appeal, and the considerations set out hereunder, the FAC has decided to affirm the decision of the Minister to grant licence reference TFL00451520 at Glendine, Co. Offaly.

#### **Background**

An Inspector's Certification Report with a last spatial run date of 09/04/2020 describes the soil type underlying the project area as predominantly podzolic in nature, with a predominantly flat to moderate (<15%) slope and that the site adjoins or contains an aquatic zone(s). The vegetation type(s) within the project area comprise mixed high forest.

The report notes that there are ten Natura 2000 sites within 15Km of the proposed forest thinning, 8 SACs and 2 SPAs; Clonaslee Eskers & Derry Bog SAC (Site Code 000859), Coolrain Bog SAC (Site Code 002332), Island Fen SAC (Site Code 002236), Knockacoller Bog SAC (Site Code 002333), Lisduff Fen SAC (Site Code 002147), River Barrow & River Nore SAC (Site Code 002162), Sharavogue Bog SAC (Site Code 000585), Slieve Bloom Mountains SAC (Site Code 000412), River Nore SPA (Site Code 004233) and Slieve Bloom Mountains SPA (Site Code 004160). The report records an Appropriate Assessment Screening (AAS) decision to screen out these sites but refers to the Appropriate Assessment Determination carried out on behalf of the DAFM by Fehily-Timoney on 24/08/2020, which screens in the Slieve Bloom Mountains SPA.

The Inspector's Certification Report also contains an assessment of the environmental factors relating to the proposed felling in order to determine whether the proposed felling requires an Environmental Impact Assessment Report (EIAR) and concludes that it is not necessary to proceed EIA.

The licence application was referred to the National Parks & Wildlife Service, which replied on 07/02/2020 noting that the site is within Slieve Bloom Mountains SPA and lies close to the Slieve Bloom Mountains SAC and a tributary of the Camcor River. The report recommends mitigation measures to protect the Hen Harrier (a Special Conservation Interest (SCI) of the Slieve Bloom Mountains SPA), to protect the water quality of the stream running through the site, and to retain hedgerow and field boundaries.

The licence was also referred to Offaly County Council and a reply was received on 07/04/2020 which noted that part of the site was in a High Amenity Area/High Sensitivity Landscape Area designated in the Offaly County Development Plan 2014-2020 and that part of the site is in the Slieve Bloom Mountains SPA which is also within the High Amenity Area/High Sensitivity Landscape Area. The report stated that the site was close to designated mountain walking routes, that measures are required to protect water quality and that the development should comply with all Forestry Guidelines. (The FAC noted that the site is wholly within the Slieve Bloom Mountains SPA).

Fehily-Timoney Consultants carried out an Appropriate Assessment Screening Report (AAS) dated 10/08/2020 on behalf of the DAFM. This AAS examined the ten sites identified as being within 15km of the site. These are the same ten sites as are referred to in the Inspector's Certification. That AAS dated 10/08/2020 determined that nine of the sites could be screened out for various reasons and determined that one site, the Slieve Bloom Mountains SPA should proceed to Appropriate Assessment Stage 2 because of *"The potential significance of the project area for foraging, breeding, roosting etc by a species listed as a qualifying interest. The site lies within the Slieve Bloom Mountains SPA and within a Hen Harrier Red Zone"*.

The same consultants carried out an Appropriate Assessment Stage 2 Report (AAR) on behalf of the DAFM dated 10/08/2020. The AAR examined the proposed thinning in the context of the Slieve Bloom Mountains SPA and its Special Conservation Interest (SCI), the Hen Harrier. The AAR identified a number of site-specific mitigation measures to prevent any impact on the Hen Harrier SCI and concluded that the project will not have an adverse impact on the integrity of any European Site in view of its conservation objectives if the mitigation measures are applied.

The AAR report also contains an in-combination assessment carried out by the DAFM that concludes that the project, when considered in combination with other plans and projects, would not give rise to the possibility of a direct or indirect effect on the integrity of any European Site.



Fehily-Timoney completed an Appropriate Assessment Determination (AAD) on behalf of the DAFM dated 28/08/2020 that determined, based on objective information, that no reasonable scientific doubt remains as to the absence of any adverse effect on the integrity of any European site.

### **Appeal**

There is one appeal against the decision to grant the licence. The grounds of appeal are summarised as follows:

- That this is an application for thinning 31.59 Ha
- That no Environmental Impact Assessment screening has ever been carried out.
- It is necessary to establish if the planting of this forest complied with the law.
- No AA Screening has been carried out according to the requirements of the EU Directive and Irish implementing law.

### **Oral Hearing**

At the oral hearing, the DAFM read into the record a Statement of Fact (SoF) dated 12/02/2021 confirming the administrative details of the licence TFL00451520 as outlined above and stated that the DAFM was satisfied that all criteria in its standards and procedures had been adhered to in the making of the decision on this licence application.

A SoF prepared by the DAFM Inspectorate dated 12/02/2021 was taken as read. The SoF stated that the relevant Appropriate Assessment (AA) procedure dated (05Nov2019) was applied at the time and that the project was screened using Standard Operating Procedures. The SoF also contained a statement in reply to the appellant's grounds of appeal.

The DAFM submitted to the FAC that the S/A (Self Assessment) response to the Inspector's Certification questions 13-15, 23 and 38 was entered because the applicant had addressed these issues in the documentation submitted to the DAFM. The DAFM stated that the thinning application was not referred to Inland Fisheries Ireland because the Roscomore Stream (the tributary of the Camcor river mentioned above) which bisects the site is not in a DAFM fisheries sensitive area and that adherence to the DAFM Guidelines would protect the water quality status of that river waterbody.

With regard to the fact that the area of thinning is located in a High Amenity/High Sensitivity Area but not identified as such by the DAFM, the DAFM explained that the Inspector's Certification relies on the information provided by the DAFM GIS system and submitted that a thinning is proposed and not a clear-fell and that it would not impact on the landscape.

The DAFM submitted that the proposed thinning would not interfere with the walking route (Slieve Bloom Way) which is on the public road at this point.

The DAFM clarified that the apparent contradictions in the responses in the Inspector's certification to questions 3 & 4 (AAS) and 7 & 8 (Assessment to Determine EIA Requirement) are due to the electronic system not permitting updating after the field inspection of 05/03/2021.

### **Consideration by the FAC**

The FAC consulted with publicly available mapping provided by the Environmental Protection Agency, the OSI, the DAFM, and other on-line services.

The aerial photography shows the site of the proposed thinning bounded by agricultural grassland on the north and west and by conifer forest to the south and east. The Roscomore Stream bisects the thinning area into a larger southern section and a smaller northern section.

The EPA mapping shows the soil types in the thinning area as a mixture of as Surface water Gleys, Peaty Gleys, Groundwater Gleys and Scree.

The Roscomore Stream is identified as River Waterbody Roscomore Stream\_10 in the WFD River Waterbody Status report 2013-2018 and has High water quality status. The WFD 3<sup>rd</sup> Cycle categorises the river waterbody as not at risk. There is a direct hydrological connection between the site and this river waterbody.

The Roscomore Stream\_10 River Waterbody is in the Lower Shannon Catchment and the Camcor\_SC\_010 Sub-catchment

The underlying groundwater body is the Slieve Bloom South IE\_SH\_G\_211 that has an Overall Groundwater Status of Good and is not at risk in the WFD 3<sup>rd</sup> Cycle programme.

The FAC notes that part of the proposed thinning lies within a Natura 2000 (Slieve Bloom Mountains SPA) but it is not required for the management of that Natura 2000 site. The FAC has confirmed that the only Natura sites identified as being within 15km of the site are those examined in the AAS.

The FAC noted that DAFM completed an Appropriate Assessment (Stage 2) Report and recorded a Determination that the proposal itself and in-combination with other plans and projects would not impact on the integrity of a Natura site subject to the inclusion of site-specific mitigation measures regarding the Hen Harrier which are incorporated into the licence conditions.

The FAC notes that while the site is in an area of High Amenity/High Sensitivity Area in the Offaly County Development Plan 2014-2020 the proposal is for forest thinning only and impact on the landscape will be minimal.

#### **EIA Directive.**

With regard to the appellant's contention that (a) no Environmental Impact Assessment screening has ever been carried out and (b) that it is necessary to establish if the planting of this forest complied with the law. The FAC in considering these two grounds have had regard to the fact that the EU EIA Directive sets out, in Annex I a list of projects for which EIA is mandatory and in Annex II, 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 felling nor deforestation is referred to in Annex I. Annex II contains a class of project specified as "initial felling 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 the compliance with the EIA process for applications relating to felling involving an area of more than 50 hectares, the construction of a forest road of a length greater than 2000 metres and any felling or forest road below the specified parameters where the Minister considers such development would be likely to have significant effects on the environment. The thinning 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 FAC finds that the DAFM recorded a consideration of the application across a range of criteria relevant to the development proposed, including water, soil, terrain, slope, designated areas, landscape and cumulative effects, and determined that the project was not required to undergo the EIA process. The FAC is satisfied that the range and type of criteria considered is sufficient for DAFM to determine whether an EIAR was required having regard to the nature, scale and location of the proposal and agrees with the conclusions reached. The record suggests that the current forest was planted in 1995 and there is no evidence before the FAC that this represented the afforestation of the lands or that the afforestation of the lands did not comply with any procedural or statutory requirements. Neither is the FAC satisfied that the DAFM erred in its processing of the application as it relates to this ground of appeal

In relation to the contention in the grounds of appeal that no Appropriate Assessment screening has been carried out according to the requirements of the EU Directive and Irish implementing law the FAC finds that, in advance of making the decision to grant the licence, the DAFM had an Appropriate Assessment Screening (AAS) carried out dated 10/08/2020 for the ten Natura 2000 sites within 15km of the project area. This AAS determined that an Appropriate Assessment Report (AAR) (Stage 2) was required for Slieve Bloom Mountains SPA and that the proposed forest thinning in-combination with other plans and projects would not have the potential to contribute to any effect on those sites for those sites screened out. Having regard to the nature and scale of the proposed development and the characteristics of the surrounding environment, the FAC concluded that this approach was correct and that there was no possibility of the proposed development giving rise to the likelihood of significant effects on any other Natura 2000 site(s) outside this distance.

The FAC noted the procedures adopted by the DAFM in its AAR dated 10/08/2020, which identified, on a precautionary basis that TFL00451520 had the potential to impact on a SCI (the Hen Harrier) of the Slieve Bloom Mountains SPA. The procedures included identification of the Slieve Bloom Mountains SPA Conservation Objectives, listing the SCI of the site and an assessment of the direct and indirect impact of the proposed thinning on SCI and mitigations measures designed to avoid any impact. The FAC noted that the mitigation measures for the Hen Harrier are included as conditions (h) to (m) in the licence.

The subsequent Appropriate Assessment Determination (AAD) dated 24/08/2020 concluded that proposed forest thinning, individually, or in-combination with other plans or projects, would not adversely affect the integrity of the European site identified in the AAD, having regard to its conservation objectives and will not affect the preservation of that site's favourable conservation status if-carried out in accordance with site specific mitigation to be attached as conditions to the licence.


The FAC concluded that the procedures adopted by the DAFM in carrying out Appropriate Assessment and the conclusion based on those procedures that the proposed development alone, or in-combination with other plans or projects, would not be likely to have significant effects on any Natura 2000 site was appropriate.

In relation to the contention in the grounds of appeal that this is an application for thinning 31.59 Ha. the FAC finds that the application materials reference the application as being for 30.36 Ha. of thinning. The FAC also finds that this area (30.36 Ha) is the same as is contained in the schedule attached to the licence as issued. While the SOF references an area of 31.59 Ha. the FAC finds that the application was made for thinning an area of 30.36 Ha., that the application was not rejected by the DAFM, and that the licence as issued is for thinning on the plots set out in the maps submitted with the application. The FAC concluded that the potential discrepancy between the area as set out in the application (30.36 Ha.) and the reference by the DAFM in the Statement provided to the FAC in relation to this appeal is minor in nature and does

not constitute a significant or serious error by the DAFM in the processing of the application for a licence in this case.

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal and submissions received including those made at the oral hearing. The FAC is satisfied that no serious or significant error or series of errors was made in making the decision and that the decision was made in keeping with fair procedure. The FAC is thus affirming the decision of the Minister regarding licence TFL00451520 in accordance 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,

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Iain Douglas, On Behalf of the Forestry Appeals Committee