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15<sup>th</sup> July 2021

**Subject:** Appeal FAC 819/2020 relating to Licence LM03-FL0050.

Dear [REDACTED]

I refer to the 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.

#### **Licence**

The licence is for 1.49 Ha. of clearfell & replanting at Lattone, Co. Leitrim. The application was submitted to the Department of Agriculture, Food and the Marine (DAFM) on 04/03/2019. There was one third party submission on the licence application dated 28/02/2019. The licence was approved by the DAFM on 19/10/2020 with conditions including those for protection of archaeology and water quality.

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

#### **Forestry Appeals Committee**

The appeal was considered at a sitting of the FAC comprising of members Mr. Donal Maguire (Deputy Chairperson), Mr. Derek Daly, Mr. Vincent Upton and Mr. Iain Douglas on the 25<sup>th</sup> of June 2021. At the sitting the FAC had before it the full DAFM record of the decision, the notice and grounds of appeal and a Statement of Fact (SoF) provided by the DAFM.

#### **Decision**

Having regard to the evidence before it, in particular the record of the decision by the DAFM, the notice and grounds of appeal, the SoF, a consultant's report and the considerations set out hereunder, the FAC has decided to affirm the decision of the Minister to grant licence Reference LM03-FL0050 Lattone, Co. Leitrim.

#### **Background**

The applicant submitted a "Pre-screening Report" dated 03/09/2020 as part of the licence application documents which describes the soil type underlying the project area as shallow gley soils, both surface water and groundwater. Gley soils are indicative of poor drainage mostly due to a high clay content. The slope of the site is described as a gentle (15% or less). The project area is located on a hilltop causing the site to slope both in a south-westerly direction and an easterly direction. The vegetation type within the project area is conifer plantation.

The report notes that there are twelve Natura 2000 sites within 15Km of the proposed clearfell & replanting, 10 SACs and 2 SPAs. Three of the sites lie wholly within Northern Ireland. The report screens out eleven sites and concludes that the project has the potential for direct, indirect or in combination effects on one transboundary European site, Lough Melvin SAC (Site Codes 000428 and UK0030047) and that the project should proceed to Appropriate Assessment Stage 2.

Lough Melvin SAC (Site Code 000428)	Largalinn SAC (Site Code UK 00030045)
Lough Melvin SAC (Site Code UK 00030047)	
Lough Gill SAC (Site Code 001976)	Monawilkin SAC (Site Code UK 00016619)
Boleybrack Mountain SAC (Site Code 0020320)	Sligo/Leitrim Uplands SPA (Site Code 004187))
Lough Golagh and Breesy Hill SAC (Site Code 002164)	West Fermanagh Scarplands SAC (Site Code UK0030300)
Ben Bulbin, Gleniff and Glenade Complex SAC (Site Code 000623)	Donegal Bay SPA (Site Code 004151)
Arroo Mountain SAC (Site Code 001403)	Glenade Lough SAC (Site Code 001919)

The applicant submitted a Natura Impact Statement (NIS) dated 03/09/2020. The NIS examined the proposed felling and replanting in the context of the Lough Melvin SAC and its Qualifying Interests (QIs) in particular salmon, otter and a number of habitats. The NIS identified a number of site-specific mitigation measures to prevent any impact on the otter and salmon and one of the identified habitats (*Oligotrophic to mesotrophic standing waters with vegetation of the Littorelletea uniflorae and/or Isoetes-Nanojuncetea*) but concluded that the proposed felling and replanting would not impact on two of the habitats that are QIs for Lough Melvin (*Old sessile oak woods with Ilex and Blechnum in the British Isles* and [*Molinia meadows on calcareous, peaty or clayey-silt-laden soils (Molinia caerulea)*]). The NIS includes an in-combination assessment and concludes that the project, when considered in combination with other plans and projects, will not give rise to the possibility of a significant effect on Lough Melvin SAC or any other European Site.

The licence was referred to Leitrim County Council which replied on 03/04/2019 stating that it had no objection to the proposal providing a number of conditions concerning roads and traffic, ensuring best practice in forestry & fisheries guidelines were followed and referring to exempt development under the Planning & Development Regulations 2013 regarding felling/replanting and forest roads.

The DAFM carried out its own Appropriate Assessment Screening (AAS) dated 15/09/2020. That AAS also examined Natura 2000 Sites within a 15km radius of the location of the proposed felling/replanting. The sites identified were the same as the applicant's AAS and NIS. Similar to the applicant's screening the DAFM AAS determined that an AA Stage 2 was required for Lough Melvin SAC.

A consultant ecologist carried out an evaluation of the applicant's NIS on behalf of the DAFM and found that the information provided in the NIS was sufficient to make a determination. The DAFM Appropriate Assessment Determination (AAD) was that the project proposed under LM03-FL0050, individually or in combination with other plans or projects, would not adversely affect the integrity of any of the aforementioned European Sites, having regard to their conservation objectives, provided a number of mitigation measures to protect water quality and the Lough Melvin SAC during harvesting and restocking operations are implemented

## **Appeal**

There is one appeal against the decision to grant the licence and the Notice of Appeal was provided to all parties. The grounds of appeal contend *“that this decision does not comply with the Habitats Directive, the EIA Directive and the Water Framework Directive”* and comment on the content of the Natura Impact Statement.

## **Considerations by the FAC.**

The FAC had before it a SoF provided by the DAFM dated 12/02/2021 confirming the administrative details of the licence LM03-FL0050 as outlined above and stating 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.

The FAC also had before it a SoF prepared by the DAFM Forest Inspectorate dated 12/02/2021. The SoF stated that the relevant Appropriate Assessment (AA) procedure dated (05Nov2019) was applied at the time of the licence being appraised 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 FAC consulted with publicly available mapping provided by the Environmental Protection Agency, the OSI, the DAFM, and other on-line services.

The proposal is of a small scale and involves the felling and replanting of a mature, commercial forest with the current trees having been planted in 1986. Aerial photography shows the site of the proposed felling/replanting bounded by agricultural grassland on the southeast and by conifer forest to the southwest and northwest.

The EPA mapping shows the soil types in the felling/replanting area as a mixture of as Surface water Gleys, and Groundwater Gleys.

The project area lies on the boundary of two River Sub Basins, the Lattone\_010 to the western part of site and the County River (Carran West) to the eastern part of the site. The water quality status of both river waterbodies is Unassigned in the WFD River Waterbody Status report 2013-2018. The risk of both is to be reviewed under the WFD 3<sup>rd</sup> Cycle. There is no direct hydrological connection between the site and either river waterbody.

Both the Lattone\_10 and County River (Carran West) River Waterbodie lie in the Erne 36 Catchment and the Drowse\_SC\_10 sub-catchment. In the sub-catchment the potentially significant pressures on the unassigned river waterbodies are forestry, agricultural activities and wastewater discharges.

The underlying groundwater body of the site is the Kilcoo IEGBNI\_NW\_G\_017 that has an Overall Groundwater Status of Good and is not at risk in the WFD 3<sup>rd</sup> Cycle programme.

The site is not in High Visual Amenity Area in the Leitrim County Development plan 2015-2021

The FAC noted that the northeast corner of the site falls within an archaeological zone for a recorded monument LE005-014-- 005-/14/3 a Linear earthwork and that condition (i) of the licence requires pre-felling surveys and consultation with the /National Monuments Service

The FAC noted that the proposed felling/replanting does not lie within a Natura 2000 and is not required for the management of a 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 DAFM AAS.

The FAC noted that DAFM completed an Appropriate Assessment Determination that recorded that the proposal itself and in-combination with other plans and projects would not impact on a Natura site subject to the inclusion of site-specific mitigation measures regarding the protection of water quality generally and the Lough Melvin SAC in particular and that the mitigation measures are incorporated into the licence conditions.

The FAC noted that the site is not in an area of High Visual Amenity and while the proposal is for clearfell & replanting, having regard to the limited area 1.49 Ha. and the character of the landscape surrounding the site, the impact on the landscape will be minimal.

#### **EIA Directive.**

With regard to the appellant's contention that the proposed felling/replanting does not comply with the EIA Directive. The FAC in considering this assertion has 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 afforestation nor deforestation is 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 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 felling/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).

#### **Habitats Directive**

With regard to the Habitats Directive, the FAC noted that, in advance of making the decision to grant the licence, the DAFM had carried out an AAS dated 15/09/2020 for the twelve Natura 2000 sites within a 15km radius of the development. The AAS determined that the an AA(Stage 2) Report was required for Lough Melvin SAC (Site Codes 000428 & UK0030047) and that the proposed clearfell & replanting 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 in the AAS. Having regard to the nature and scale of the proposed development and the characteristics of the surrounding environment, the FAC concluded that that this approach was correct and that there was no evidence before it of the possibility of the proposed development giving rise to the likelihood of significant effects on any Natura 2000 site outside this 15km distance.

The FAC noted the procedures adopted by the DAFM in its AAS identified, on a precautionary basis that licence LM03-FL0050 had the potential to impact on the QIs of Lough Melvin SAC and requested the applicant to proceed to AA Stage 2. The NIS submitted by the applicant included, identification of the Lough Melvin SAC Conservation Objectives, listing the QIs of the site and an assessment of the direct and indirect impact of the proposed felling /replanting on the QIs and mitigation measures designed to avoid any impact. The FAC noted that the mitigation measures for the protection of water quality and the Natura site are included as conditions (j) to (r) in the licence.

The subsequent AAD of 21/09/2020 concluded that proposed felling/replanting, 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 measures 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 were appropriate and is not satisfied that an error was made in making the decision in this regard.

#### **Water Framework Directive**

With regard to compliance with the Water Framework Directive the FAC noted that there is no direct connection from this site to any waterbody identified in the Drowse\_SC\_10 sub-catchment and that the conditions that the DAFM has attached to the licence relate, in the main, to the protection of water quality. The FAC also noted the DAFM response to the grounds of appeal where it is stated:

*"...DAFM applies a wide range of checks and balances during its evaluation of felling licence applications in relation to the protection of water, as set out in the DAFM document Forests & Water: Achieving Objectives under Ireland's River Basin Management Plan 2018-2021 (2018). Critically, any felling licence issued is conditional on adherence to the Interim Standards for Felling and Reforestation (DAFM, 2019), which set out a wide range of operational measures to prevent direct and indirect impact on water quality arising from the operation...."*

and

*"In relation to reforestation, those Standards stipulate water setbacks adjoining aquatic zones, and these, together with the silt trapping and slow-water damming of forest drains required during felling, introduce a permanent undisturbed semi-natural buffer along the watercourse, developed primarily to protect water."*

Conditions (a) and (t) of the licence refer to adherence to a number of best practice guidelines including "Felling & Reforestation Standards" 2019.

The FAC noted that there are eight conditions (the mitigation measures specified in the AAD for Lough Melvin SAC) relating to protection of water quality including the interception and prevention of emissions (especially waterborne emissions) leaving the project site and entering any WFD River Watercourse leading to the SAC.

The grounds of appeal did not submit any specific information regarding effects on water quality or pathways related to the proposal. Based on the information available to it, the FAC is not satisfied that the proposal as licenced would have an effect on a waterbody or that the Minister has erred in this regard in the making of the decision.

In considering the appeal the FAC requested a report from an Independent Consultant, which is available on the public file. The report considers the application and proposal details and the grounds of appeal and the processing of the application by the DAFM and matters in relation to Appropriate Assessment and EIA in particular. The report concludes that the proposed felling does not come within the classes of project covered by the EU EIA Directive or national legislation and, in considering the size, nature and location,

that the proposed project would not be likely to have significant effects on the environment and the carrying out of EIA was not required. It is also concluded that the project individually, or in combination with other plans or projects, is not likely to have any significant effect on any of the Natura 2000 sites screened out from the requirement for Appropriate Assessment, having regard to the reasons for designating the sites and their conservation objectives. It is further concluded that, subject to compliance with the conditions imposed in the licence, the proposal of itself or cumulatively with other plans or projects would not adversely affect the integrity of either of the designated Lough Melvin SACs.

### **Conclusion**

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal and Statement of Fact submitted by the DAFM and a Consultant's report. The FAC is satisfied that no serious or significant error or 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 LM03-FL0050 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