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26<sup>th</sup> July 2021

**Subject:** Appeal FAC723/2020 in relation to felling licence TFL00125518

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, has now completed an examination of the facts and evidence provided by all parties to the appeal.

#### **Background**

Felling licence TFL00125518 was issued by the Department of Agriculture, Food and the Marine (DAFM) on the 28th of August 2020.

#### **Hearing**

An Oral Hearing of appeal FAC650/2020 was held by the FAC on the 1<sup>st</sup> June 2021.

Oral Hearing participants:

FAC:	Mr Des Johnson (Chairperson), Mr Dan Molloy, Mr John Evans & Mr Luke Sweetman
Secretary to the FAC:	Mr Michael Ryan
Applicant:	[REDACTED]
DAFM representatives:	Ms Eilish Kehoe, Ms Niamh Hennessy

#### **Decision**

The 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 other submissions, before deciding to affirm the decision to grant felling licence TFL00125518.

The licence under appeal is for the thinning of 18.85ha of 100% Norway spruce in Ballybrigadane, Co. Wexford. The DAFM information states the underlying soils are predominately Podzols in nature, the slope is predominantly flat to moderate (<15%) and the project area is crossed by / adjoins an aquatic zone(s). The site is within the 12 Slaney & Wexford Harbour Catchment, the Whitefort\_SC\_010 Sub-Catchment and the Sow\_010 River Sub-basin. The River Sow flows along the northern boundary of the site. Two relevant watercourses (RWCs) and a land drain flow from the proposal into the Sow. The Sow\_010 Waterbody was assigned 'Moderate' status and deemed to be 'At Risk' by the Environmental Protection Agency (EPA) in the Water Framework Directive 2013-2018 reporting period. The Inspector's Certification document states that the project area, together with existing thinning and/or clearfelling of three years or less within a 500m radius constitutes an area of 37.38ha. It also states that the project

area, together with other thinning and/or clearfelling applications within 500m and recommended for felling equates to an area of 37.38ha.

The applicant submitted a felling licence application with associated maps on the 5<sup>th</sup> March 2018. The DAFM referred the application to Wexford County Council (WCC) and Inland Fisheries Ireland (IFI). WCC responded stating the following (in summary):

- There is no Tree Preservation Order relating to the trees under consideration.
- The proposal is within an area identified as at risk of flooding. The role of trees in flood management (attenuation) should be considered, including possible negative effects of their removal.
- Proposal has a hydrological link to the "Slaney Valley Special Conservation Area" and the project should be assessed under the Habitats Directive.
- No objection on visual amenity grounds.
- In the absence of data on the species of trees to be felled, the Planning Authority has been unable to determine whether the trees in question should be retained for their amenity.
- The Planning Authority trust that the proposed "felling and replanting" will be carried out in accordance with all relevant best practice guidelines.

IFI responded as follows (in summary):

- The River Sow is an important Salmonid tributary of the Slaney. The Slaney River and its tributaries are important salmonid spawning and nursing waters.
- An IFI inspection highlighted that the site of this "clearfell" is low-lying and that ground conditions are peaty in nature and very wet with numerous small drainage channels throughout.
- IFI has concerns that the movement of machinery across wetter sections will result in rutting/soil erosion and request clarification on how this felling operation can be undertaken without soil erosion and the loss of suspended solids/nutrients to watercourses given the difficult conditions on-site.
- Serious concerns that this felling relates to a large crop of Norway Spruce, a species which yields very small quantities of the brash necessary to prevent soil erosion/rutting during felling operations.
- IFI request that a detailed overview of the drainage of this site be undertaken and that the applicant demonstrates how the movement of heavy machinery on this site can take place without resulting in significant soil erosion and nutrient losses. It was submitted that it is important that the applicant demonstrates that their proposed "clear-fell" does not contribute to deterioration in downstream water quality.
- IFI state that site conditions did not allow for a full inspection of this site and requested a meeting on-site with the forestry contractor to carry out a full inspection of the central and northern portion of the site.

Following receipt of IFI's response, the DAFM requested that the applicant submit a Harvest Plan with annotated maps to provide an overview of the proposed felling area's current drainage channels and hydrology. The DAFM stated the plan should include "mitigation measures and information that demonstrates how the movement of harvesting and extraction machinery can take place to avoid soil erosion, sedimentation and deterioration of downstream water quality in the River Sow.

In assessing the licence application, the DAFM completed a Stage 1 Appropriate Assessment Screening (AAS) of six European sites within 15km of the proposal and five were screened out for the following reasons:



- **Kilmuckridge-Tinnaberna Sandhills SAC, Raven Point Nature Reserve SAC, Screen Hills SAC, The Raven SPA;**
  - The absence within and adjacent to the project area, of any habitat(s) listed as a qualifying interest of the Natura site.
- **Wexford Harbour and Slob SPA;**
  - The unsuitability of the project area for use by any species listed as a Qualifying Interest of the Natura site.

The AAS within the Inspector's Certification document before the FAC does not contain a screening conclusion for the Slaney River Valley SAC, the relevant field is blank. However, an Appropriate Assessment Report (AAR), dated 24<sup>th</sup> July 2020 was prepared by an external Ecologist on behalf of the DAFM. The AAR documents the Stage 2 Appropriate Assessment of the Slaney River Valley SAC and considers the potential for the proposal to have adverse effects on the integrity of this Natura site in light of its Conservation Objectives before prescribing site-specific mitigation measures to be included as licence conditions. These conditions include measures relating to machine exclusion zones from aquatic zones, the installation and maintenance of silt traps and brash mats, weather-related restrictions, water crossings, and adherence to all water-related measures in the Interim Standards for Felling and Reforestation (October, 2019).

The AAR consulted various planning websites along with DAFM internal records in completing an assessment of the potential for the proposal to contribute to an in-combination effect on European sites in the vicinity of the River Sub-Basin Sow\_010. The AAR deemed that this project, when considered in combination with other forestry and non-forestry plans and projects, "will not give rise to any adverse effect on the integrity of any European site."

The DAFM made an Appropriate Assessment Determination (AAD). The AAD states that the Slaney River Valley SAC was screened in for Stage 2 Appropriate Assessment because the project area is located c.10km upstream of the Natura site with a direct hydrological connectivity and there are potential impacts from sedimentation and siltation. The AAD was prepared by an external Ecologist on the DAFM's behalf on the 27<sup>th</sup> July 2020 and reviewed and adopted by the DAFM on the 13<sup>th</sup> August 2020. The AAD states the proposed project, individually or in-combination with other plans or projects, will not adversely affect the integrity of the screened European sites, having regard to their Conservation Objectives, provided the "following mitigation is required." The AAD prescribes the same mitigation measures listed in the AAR and states that the basis for the AAD is that "this is a thinning activity occurring 10km upstream from the screened-in site. Appropriate siltation and sedimentation minimisation measures have been set in conditions to ensure there will be no pathways of impact to the designated site." The AAD states that based on objective information, "no reasonable scientific doubt remains as to the absence of any adverse affect on the integrity of any European site."

The licence issued on the 28<sup>th</sup> August 2020 and is exercisable for 10 years. The licence is subject to relatively standard conditions (a) to (g) plus "(h) strictly adhere to the Standards for Felling & Reforestation (October 2019). These Standards replace the existing Forest Harvesting & the Environment Guidelines (2000) and (i) Strict adherence to all conditions as per attached AA Determination."

There is one appeal against the licence, the grounds of appeal state:

- 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 Appropriate Assessment screening has been carried out according to the requirements of the EU Directive and Irish implementing law.

The DAFM responded in a written Statement to the FAC which states:



- These lands did undergo a regulatory consent process before receiving approval. This would have also involved an assessment for the requirement for an EIA.
- The relevant Appropriate Assessment procedure was applied in approving this licence. The screening information can be found on file. An in-combination assessment was also carried out for this application and can also be found on file. Using the current Appropriate Assessment procedure in conjunction with the Habitat & Foraging guidance tables all Natura 2000 sites have been screened out as outlined on file. This application alone or in-combination with other forest and non-forest plans/projects in the area will not have a significant impact the Qualifying Interests of the Natura 2000 sites screened as part of the AA.

The FAC held an Oral Hearing on the 1<sup>st</sup> June 2021. The FAC sat remotely for this hearing, the appellant did not participate and both the applicant and the DAFM participated remotely. The DAFM detailed their approach to processing the application. Confirming that the Forestry Inspector had referred the file to the DAFM's ecology unit following an initial review and that the Slaney River Valley had been screened in and that mitigation measures were prescribed in the AAD. The FAC queried the DAFM's consideration of IFI's response and if their requests had been carried into the licence conditions. The DAFM confirmed that these had not been explicitly stated in the licence conditions but that the general conditions relating to best forest practice would cover many of the IFI requests and that the IFI response had been sent to the applicant along with the licence. The DAFM also stated that there is a record on iFORIS stating that the previous Forestry Inspector, who had initially dealt with this application, had spoken to the applicant's Forester who had agreed to arrange a meeting on site with IFI before submitting a Harvest Plan. The FAC queried how a Third Party may find out what was agreed between IFI and the applicant's Forester. The DAFM were unable to confirm how this could happen other than inference from the file.

The applicant did not wish to make any comment other than to state that their Forester was employed to oversee the application and operations and to confirm that a meeting had taken place between their Forester and IFI prior to the submission of the Harvest Plan.

Responding to FAC questions, the DAFM stated that the Slaney River Valley had been screened in for Appropriate Assessment because of the direct hydrological connection with the application site, the soils underlying the proposal are peaty Podzols and that the River Sow is a source of potable water for Wexford Town. Regarding WCC's statement that the proposal is in an area at risk of flooding, the DAFM stated that, based on their GIS layers, a section in the north-east of the project area is indicated as being at risk of flooding but that this section would be dealt with by the 10m machine exclusion zone prescribed in the AAD. In response to FAC queries, the DAFM stated that they are satisfied that 10m aquatic zone machine exclusion zones are sufficient, in light of the soil type and the comments from IFI. They also confirmed that an inspection track formed by old field boundaries would be retained and stated that they considered the licencing of this proposed development to be in order, based on professional judgement, the information available, and the ecological input into the process.

The FAC had regard to the grounds of appeal. The appellant submitted that no EIA has ever been carried out and that the FAC must establish if the planting of this forest complied with the law. The planting year of the forest under licence is 2000. The FAC considered the DAFM's written statement that the afforestation of this site underwent regulatory consent process which would have involved an assessment for the requirement for an EIA. The FAC noted that the appellant did not submit any evidence to substantiate their contention regarding the legality of the afforestation of the project area. The FAC considers that there is no convincing evidence before it to support the appellant's contention regarding the legality of the original afforestation. In considering the grounds of appeal, the FAC was cognisant that the remit of the FAC is to decide if the Minister made a significant or serious error, or



series of errors in deciding to grant TFL00125518, and if the licence was granted in compliance with fair procedures.

The FAC considered the appellant's contention that no AAS has been carried out according to the requirements of the EU Directive and Irish implementing law. The appellant did not provide any other information to contextualise their contention regarding the AAS procedure. The FAC noted that, as detailed above, the DAFM completed an AAS leading to the Slaney River Valley SAC being screened in for Stage 2 AA. An AAR, and subsequently an AAD, was prepared by an external Ecologist. The AAD, including its prescribed mitigation measures, were reviewed and adopted by the DAFM prior to issuing TFL00125518. The AAD concludes that no reasonable scientific doubt remains as to the absence of any adverse affect on the integrity of any European site. The felling licence issued by the DAFM requires the Licensee to adhere to all conditions "as per attached AA Determination." The FAC noted that there was an error in the AAS document in evidence before the committee, specifically the lack of a screening conclusion for the Slaney River Valley SAC. However, the FAC noted that the screening conclusion for this Natura site is recorded in the AAD, and having confirmed the reason for the Slaney River Valley SAC being screened in at the Oral Hearing, the FAC did not consider this error to significant or serious in the particular circumstances of this case.

The FAC considered the DAFM's consideration of the response received from IFI. The FAC considered the evidence from the DAFM at the Oral Hearing that the Forestry Inspector who originally dealt with this application had spoken to the applicant's Forester who had agreed to arrange a meeting on site with IFI before submitting a Harvest Plan. The FAC also noted the applicant's statement that his Registered Forester had met with IFI personnel on-site prior to submitting a Harvest Plan. The FAC also noted that, having received a referral response from IFI, the DAFM, on the 29<sup>th</sup> October 2019, requested the applicant's Forester to submit a Harvest Plan to include specific detail requested in the IFI's response. In evidence before the FAC is a Harvest Plan, dated 5<sup>th</sup> December 2019, submitted by the applicant's Forester, along with an annotated map, which includes written detail as to how silt and sedimentation risks will be managed on the site. The Harvest Plan notes that there are RWCs present on-site and the site adjoins the River Sow to the north and that there are "well vegetated buffers present along all of these". The Harvest Plan includes details on how exclusions zones, brash mats, silt traps and timing of operations will be managed in order to protect water quality. The location of two planned temporary bridging points is included on the map along with timber stacking areas along the forest road, away from RWCs. The FAC noted that the response from IFI refers to a planned clearfell and that the proposed development is in fact a thinning operation which poses a significantly reduced threat to the proximate RWCs and the River Sow than a clearfell operation might. In these circumstances, the FAC considered that the DAFM had given sufficient consideration to the response received from IFI prior to deciding to issue felling licence TFL00125518.

In the circumstances outlined above, and based on the evidence before it, the FAC is satisfied that the DAFM did not make a serious or significant error, or series of errors, in their decision to issue TFL00125518 and did so in compliance with fair procedures. In deciding to affirm the decision of the Minister, the FAC considered that the proposed development is in line with Government policy and good forestry practice.

Yours sincerely

A black rectangular redaction box covering the signature of Luke Sweetman.

Luke Sweetman on behalf of the Forestry Appeals Committee

