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31<sup>st</sup> May 2021

**Subject:** Appeal FAC 275/2020 relating to Licence TFL00380619.

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 (DAFM). 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**

The licence is for 6.65 Ha of clear-fell and reforestation of windthrow at Sramore & Gleneige, Manorhamilton, Co. Leitrim. The application was submitted to the DAFM on 24/07/2019. Two third-party submissions were received on the licence application, one dated 14/08/2019 and one undated. The licence was approved by the DAFM on 25/05/2020 with conditions including mitigation measures in respect of Qualifying Interests of Otter and Peregrine Falcon.

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

#### **Hearing**

The appeal was considered by FAC Members: Mr. Des Johnson (Chairperson), Mr. Luke Sweetman, Mr. Dan Molloy and Mr Iain Douglas on the 25<sup>th</sup> of May 2021.

#### **Decision**

Having regard to the evidence before it, in particular, 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 regarding licence reference TFL00380619 at Sramore & Gleneige, Manorhamilton, Co. Leitrim.

#### **Background**

The Statement of Fact (SoF) by the DAFM Forestry Inspectorate dated 22/11/2020 indicates that the proposed clear-fell and reforestation was the subject of a desk assessment and field inspection. An Appropriate Assessment (AA) Screening Form (26Nov18) dated 16/08/2019 describes the soil type underlying the site as being mainly podzols/brown podzolics/brown earths, gleys/highly modified peat &

peaty podzols, blanket bog/raised bog in nature. The slope is varied mainly flat to moderate (<15%), steep (15% to 30%) and very steep (>30%). The project area is crossed by an aquatic zone.

The AA Screening Form states there are two Natura 2000 sites, Benbulbin/Gleniff/Glenade SAC (Site Code 0623), Lough Gill SAC (Site Code 1976) and a proposed Natural Heritage Area, Crockauns/Keellogboy Bog NHA (Site Code 2435) within 3Km of the proposed forest thinning. The AA Screening concludes that the project can be screened out and an Appropriate Assessment is not required. The reason stated is that the proposal will not have a significant impact on the Natura 2000 site subject to compliance with the mandatory adherence to any safeguards within the project, as set out in published Forest Service guidelines, requirements and procedures.

The DAFM carried out a second AA Screening using the updated 05Nov19 format, which examines all Natura 2000 sites within 15 Km of the proposed clear-fell/reforestation. 14 sites were screened, 10 SACs and 4 SPAs. The conclusion was to screen out all sites.

Under standard procedure, an ecologist reviews licences where Natura 2000 sites have been identified. An Appropriate Assessment Report (AAR) was prepared dated 13/03/2020. The AAR screened the same 14 sites as the Inspector's report but concluded that two sites Benbulbin, Gleniff and Glenade Complex SAC (Site Code 000623) and Sligo/Leitrim Uplands SPA (Site Code 004187) should proceed to AA Stage 2. In the case of Benbulbin, Gleniff and Glenade Complex SAC the proposal was found to have the potential to adversely impact on two Qualifying Interests (QIs) (a) *Water courses of plain to montane levels with the Ranunculus fluitantis and Callitriche-Batrachion vegetation (Aquatic)* and (b) *Lutra lutra (Otter)*. In the case of the Sligo/Leitrim Uplands SPA, the proposal was found to have the potential to adversely impact on the QI, the Peregrine Falcon (*Falco peregrinus*). The AAR prescribes site-specific measures to mitigate against adverse impacts on the three QIs to be inserted as conditions of the licence.

The AAR includes an In-combination assessment that concludes that the project, when considered with other plans or projects will not give rise to the possibility of a significant effect on any Natura site.

An Appropriate Assessment Determination dated 13/03/2020 finds that, based on best scientific knowledge in the field and in accordance with the European Communities (Birds and Natural Habitats) Regulations 2011, as amended, pursuant to Article 6(3) of the Habitats Directive, that the felling and reforestation proposed under TFL00380619; individually, or in-combination with other plans or projects, will not adversely affect the integrity of any European site, in particular Benbulbin, Gleniff and Glenade Complex SAC; Cummeen Strand/Drumcliff Bay (Sligo Bay) SAC and Sligo/Leitrim Uplands SPA having regard to their conservation objectives and will not affect the preservation of these sites at favourable conservation status, if carried out in accordance with specific mitigation measure to be attached as conditions to the licence.

The licence application was referred to Leitrim County Council that replied on 14/08/2019 objecting to the reforestation on the ground that the site is within an area designated as having a low capacity/high sensitivity to accommodate forestry. The response also states two conditions should the licence be granted.

### **Appeal**

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

- The decision doesn't comply with the Habitats, Birds & EIA Directives



- Development that is within 15km of a Natura 2000 site has to be screened in.
- A map showing the SACs and SPAs and the site of the proposed development should be provided.
- The FAC is required to carry out screening for Appropriate Assessment and Environmental Impact Assessment.

#### **Evidence before the FAC**

At the hearing FAC had before it, in addition to the record of the decision, a Statement of Facts dated 28/01/2021 provided by the DAFM confirming the administrative details of licence TFL00380619 as outlined above and stating that the DAFM is 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 that was provided by the DAFM Forestry Inspectorate dated 22/11/2020 stating that the relevant AA Screening procedure at the time was applied and those standard operating procedures were followed.

#### **Consideration by the FAC**

The FAC consulted with publicly available mapping provided by the Environmental Protection Agency (EPA), the Ordnance Survey of Ireland (OSI), the Forest Service, and other on-line services.

Aerial photography from the year 2020 shows the forestry, site of the proposed clear-fell and reforestation, bounded by rough grazing land. The forest itself has a significant area of windthrow.

Historical mapping shows a watercourse corresponding to the two branches of Water Framework Directive (WFD) River Waterbody Diffreen\_010 running south to north through the site exiting the site in a central position on the eastern boundary of the forest. The River Waterbody Diffreen\_010 has been assigned good water quality status in the 2013-2018 assessment period and is not at risk. While there is a direct hydrological connection between the forestry and Diffreen\_010, the licence conditions include compliance with, inter-alia, The Forestry and Water Quality standards and site-specific mitigation measures designed to prevent silt and sediment run-off from the site to sensitive watercourses.

The Diffreen\_010 River Waterbody is part of Sligo Bay 35 Catchment and Drumcliff\_SC\_010 sub-catchment.

The site has two underlying groundwater bodies, Drumcliff-Strandhill IE\_WE\_G\_0044 that is to be reviewed and Carrowmore East IE\_WE\_G\_0042 that is at risk due to diffuse agriculture pressure categorised in the WFD 3<sup>rd</sup> Cycle programme.

EPA mapping shows the soil type(s) of the site as Surface water Gleys, Ground water Gleys, Peaty Gleys.

The proposed felling and reforestation is neither within a Natura 2000 site nor is it required for the management of a Natura 2000 site. The FAC has confirmed that fourteen Natura sites lie within 15km of the site area, as identified in the AA Screening, AAR and AAD.

The FAC noted that DAFM completed and recorded an Appropriate Assessment and determined that the proposal itself and in-combination with other plans and projects would not significantly impact on any Natura 2000 Site subject to mitigation measures to be included in the licence.

The FAC noted that the site is not within an Area of Outstanding Natural Beauty or Area of High Visual Amenity identified in the Leitrim County Development Plan 2015-2021

The FAC considered the following matters as raised in the grounds of appeal:

***The decision does not comply with the Habitats Directive, the Birds Directive and the Environmental Impact Assessment Directive.***

This ground contends that the decision does not comply with the Habitats, Birds and EIA Directives but provides no substantiation for this assertion.

With regard to Habitats and Birds Directives, the FAC noted that the DAFM had carried out an Appropriate Assessment Report (AAR) dated 13/03/2020 including an in-combination assessment, in advance of making the decision to grant the licence. This identified 14 Natura 2000 sites, 11 SACs and 3 SPAs within a 15km radius of the development. 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 possibility of the proposed development giving rise to the likelihood of significant effects on any Natura 2000 site outside this distance.

The FAC noted the procedures adopted by the DAFM in its AAR which included screening, listing the qualifying interests and conservation interests for each site within the 15km radius of the development and assessment of the project design, location of the project and possible pathways to the listed designated sites. The FAC further noted that, in the case of 12 of the Natura 2000 sites listed the DAFM discounted the possibility of significant effects from the proposal for the reasons stated above. The AAR identified on a precautionary basis that TFL00380619 had the potential to impact on two sites Benbulbin, Gleniff and Glenade Complex SAC (Site Code 000623) and Sligo/Leitrim Uplands SPA (Site Code 004187) and prescribed Site-specific measures to mitigate against such impacts.

The subsequent Appropriate Assessment Determination (AAD) included a further Natura 2000 site, the Cummeen Strand/Drumcliff Bay (Sligo Bay) SAC. The AAD conclusion was that proposed felling and replanting individually, or in-combination with other plans or projects, would not adversely affect the integrity of the 3 European sites identified in the AAD, having regard to their conservation objectives and will not affect the preservation of those sites' favourable conservation status if-carried out in accordance with 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 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. Forest roads are not referred to in Annex I or Annex II. The Irish Forestry Regulations 2017, 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 FAC noted that the DAFM considered the application across a range of criteria, including water, designated areas, landscape and cumulative effects and determined that the project was not required to undergo the EIA process. The proposal is for felling and replanting of 6.65 Ha. is considerably sub-threshold for the mandatory submission of an EIAR. Having regard to the record of the decision and the submitted grounds and the nature, scale and location of the proposal the FAC is satisfied that the DAFM did not err in its decision concerning EIA.

***Screening for EIA should include all forestry in the area and show that the cumulative afforestation does not exceed 50 Ha., the total km of the forest roads in the area and show that roads that are not included in the application are not required to carry out the development, including thinning and clear-fell.***

The FAC notes that this licence is for a felling and replanting and that the DAFM in its Assessment to Determine EIA Requirement addresses the matter of cumulation of forestry in the area. The DAFM indicates that licence area and other forestry in the vicinity does not exceed 50 Ha.

***A map showing the SACs and SPAs and the site of the proposed development should be provided.***

The FAC notes that the national guidance on AA Screening simply requires the identification of relevant Natura 2000 sites, and compilation of information on their qualifying interests and conservation objectives. The FAC is satisfied that, in addition to the details provided in the AAR and the considerations undertaken by the DAFM, the listing of all Natura 2000 sites within 15km of the proposed development and their Qualifying Interests in tabular form the requirement of AA Screening has been met by the DAFM.

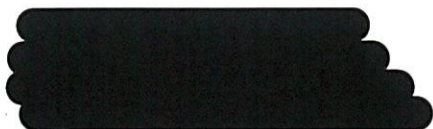
***The FAC is required to carry out screening for Appropriate Assessment Screening and Environmental Impact Assessment.***

The FAC within the statutory provisions considers an appeal made in relation to a decision to issue a licence and the procedures undertaken in relation to how the decision was made. The FAC is satisfied with the procedures followed by the DAFM and the conclusions reached in respect of EIA and AA.

### **Conclusion**

In considering the appeal, the FAC had regard to the record of the decision and the submitted grounds of appeal and is satisfied that no serious or significant error occurred in the making of the decision to grant the licence and that the decision was made in accordance with fair procedures. In deciding to affirm the decision of the Minister the FAC concluded that the decision of the DAFM regarding licence TFL00380619 should be affirmed.

Yours sincerely,

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Iain Douglas, On Behalf of the Forestry Appeals Committee

