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10th June 2021

Subject: Appeal FAC691/2020 and FAC696/2020 regarding licence TFL00500420

Dear [REDACTED]

I refer to the appeals 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.

Background

Licence TFL00500420 for felling on 12.46 ha at Aghagrania, Co. Leitrim was issued by the Department of Agriculture, Food and the Marine (DAFM) on 26th August 2020.

Hearing

An oral hearing of appeals FAC691/2020 and FAC696/2020 was held by the FAC on 26th May 2021. In attendance at Oral Hearing:

FAC Members: Mr. John Evans (Deputy Chairperson), Mr. James Conway and Mr. Vincent Upton.

Secretary to the FAC: Ms. Marie Dobbyn.

Department Representatives: Ms. Eilish Kehoe, Mr. Seppi Hona and Ms. Niamh Hennessy (Observer).

Appellant FAC696/2020: [REDACTED]

Appellant FAC691/2020: Not present

Applicant: Not present

Decision

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notice of appeal, submissions received and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister for Agriculture, Food and the Marine regarding licence TFL00500420.

The licence pertains to the thinning of 12.45 ha of forest comprised of Sitka spruce and broadleaves at Aghagrania, Co. Leitrim. The thinning would take place in 2024 and 2028 and constitute first and second thinning of the forest which was planted in 2012. The record describes the site as on a podzolic soil and a flat to moderate slope, that the area is crossed or adjoins an aquatic zone and that vegetation in the project area comprises conifer plantation. A harvest plan was requested and submitted in a template

form and includes operational maps. There is one submission from a member of the public which makes general comments regarding obligations on the Minister. The DAFM undertook a screening for Appropriate Assessment and identified two sites within 15km of the forest; Boleybrack Mountain SAC 002032 and Cuilcagh - Anierin Uplands SAC 000584. A consideration of other plans and projects in combination with the proposed thinning is also recorded and the DAFM determined that it should not proceed to Appropriate Assessment. The DAFM also recorded a determination that the project should not proceed to the EIA process. The licence was issued on 20th August 2020.

There are two appeals against the decision and the full grounds were provided to all parties. The grounds of FAC696/2020 submit that the Forest Service failed to supply, on request, in an appropriate timeframe, relevant records that have informed its decision to award this licence, as would be required under the EIA Directive and that records were only provided on 15th September 2020. It is submitted that the afforestation of the lands was carried out without appropriate screening for the requirement for an EIA, including an Appropriate Assessment under Article 6 (3) of the Habitats Directive and that retrospective assessment is required. That the Determination of the Inspector in terms of the Requirement for an EIA is inadequately reasoned and that the Harvest Plan is not consistent with the requirements of the Interim Standard for Felling & Reforestation. It is submitted that the Stage 1 AA conclusion for site 000584 is not legally valid as it is factually incorrect as it contains lacunae and that there is insufficient detail and clarity in the In Combination information to enable a definitive position to be reached on the cumulative effect of this project with other plans and projects.

FAC691/2020 submits that the thinning is adjacent to Cuilcagh-Anierin Uplands SAC (code 000584) a designated Natura 2000 site, which is described as one of the most extensive areas of Montane blanket bog in Ireland and of special European significance. It is submitted that any disturbance, of any kind, to the Aghagrania River and surrounding land could have a negative effect on the water table underlying the bog SAC and that the underlying bog reaches down to and continues below the elevation of the proposed felling site. That a number of waterbodies in the area including the Aghagrania River, are already identified as being below optimal standard and are "at risk" in relation to the Water Framework Directive. That from the documentation provided there is no evidence of the project being screened in for Appropriate Assessment and that any such Assessment would also need to take into consideration the in combination effects of this project with other Felling and Afforestation applications in the immediate area including a number of identified licences. A number of maps were also provided with the Appeal attributed to the EPA and EU Copernicus data.

In a statement to the FAC, the DAFM stated that the decision was issued in accordance with their procedures, S.I. 191/2017 and the 2014 Forestry Act and that the Department is satisfied that all criteria outlined in its standards and procedures policy have been adhered to in making a decision on the application. It also records the relevant application processing dates, and that it was desk assessed. The statement further submits that the site is located approximately 2 km downstream from the Cuilcagh – Anierin -Natura 2000 site and that the site was screened for AA and screened out as outlined in the AA screening determination alone and in-combination with other plans and projects in the area. The

assessment can be found on file. It is submitted that the qualifying interests for the Natura 2000 site were screened using the habitat and foraging tables utilised by the DAFM in carrying out the AA screening process and that a thinning operation cannot impact a Natura 2000 site located 2 km upstream from the proposed operation area.

An oral hearing of the appeal was held and attended by representatives of the DAFM and the Appellant of FAC696/2020. At the oral hearing the DAFM provided the dates and details of the application, assessment and licence and submitted that the Appellant had not made a submission and would have been provided with the documentation had they so done. The DAFM Inspector submitted that while the licence was issued following a desk assessment that they were familiar with the site from previous inspections and that the forest was established with a setback from the watercourse. The screening for Appropriate Assessment was described. They submitted that the Harvest Plan shows the extraction route and stacking areas, that the closest archaeological monument was 500 metres from the forest and that a separate forest road application would be required for any forest road works undertaken. They submitted that referrals would be discretionary in this case and that it was considered that there was no need to make a referral. The Appellant submitted that the documents were not provided to them following two requests after the decision was made. They questioned whether an adequate EIA or AA screening had been undertaken at planting with particular reference to water quality. They questioned responses provided in the Inspectors Certification in particular in relation to local impacts, impacts on water bodies on the submitted maps, archaeology and road infrastructure. They submitted that the Harvest Plan lacked details on access, watercourses and hedgerows. They submitted that the forest is hydrologically connected to an SAC even if it is downstream and question the lack of referrals to prescribed bodies.

The FAC considered the grounds related to water quality in the first instance. The forest lies in Yellow[Ballinaglera] 010 subcatchment of the Upper Shannon 26A Catchment. The western boundary of the forest is adjoined by a stream that is unnamed by the EPA but forms part of the Aghagrania River and the Drumshanbo stream_010 waterbody which has been assigned a Poor status (2013-2018) and At Risk regarding the objectives of the Water Framework Directive (WFD). The EPA identified pressures for the second WFD cycle related to agriculture and urban areas (Agriculture, Pasture, Urban Waste Water and Agglomeration PE of 2,001 to 10,000). The operations are required to be undertaken in line with a number of conditions that include measures to protect water quality. The DAFM submitted that the forest is setback from the watercourse as a buffer had been left unplanted at establishment and aerial imagery of the site appears to collaborate this. The site is described as flat to moderate and on a mineral soil and indicative soil mapping for Ireland would suggest the area is on poorly drained mineral soils. The proposal is for a first and second thinning without the complete clearance of land or excavation works. The Appellant had submitted that a stream is also marked at the southeastern section of the forest on the Applicant's maps but the FAC is satisfied that this represents the extraction route to the timber stacking areas and not a watercourse. The FAC considers that there is no evidence that the proposed thinning as licenced would pose a threat to water quality.

Under Article 6(3) of the Habitats Directive, any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The DAFM undertook and recorded a screening for Appropriate Assessment and identified two sites within 15km. The FAC employed publicly available information provided by the EPA and NPWS and identified the same two sites. Each site is considered in turn by the DAFM along with their qualifying interests and reasons are provided for the screening conclusion. A consideration of other plans and projects is also recorded that includes forestry and non-forestry activities. Boleybrack Mountains SAC is situated some 15km from the proposal and to the north in a separate subcatchment and without any pathway of effects to the proposal. The boundary of Cuilcagh - Anierin Uplands SAC lies some 1.8 km to the northeast in direct distance and the stream that adjoins the forest rises in the SAC. The DAFM record states that the design and location of the proposal were considered alongside European sites and the possibility of potential pathways and that significant effects could be excluded due to the position of the project area downstream from the European site, and the subsequent lack of any hydrological connection. Both appeals question the absence of an Appropriate Assessment. The forest is surrounded by agricultural land and other forests and historic maps of the area suggest a long history of land management. The FAC considered that the location of the proposal downstream from the SAC was of relevance to considering the potential for pathways of effects to be present given the terrestrial nature of the qualifying interests. The proposal is for the first and second thinning of a commercial forest over 1.8km from the European site in a landscape with a long history of land management. The FAC did not consider that there was any evidence that the proposed felling could result in effects on the SAC. The DAFM recorded a consideration of other plans and projects in combination with the thinning including forest and non-forestry projects. These appeared to the FAC to be appropriate and comprehensive. The FAC did not consider that there was any evidence a serious or significant error had been made in relation to the screening for Appropriate Assessment.

In regards the provision of information, this appeared to the FAC to relate to the period after the decision was made and that no submission had been made by the Appellant at the application stage on this licence. Information provided to the FAC was circulated to parties and an oral hearing of the appeal was held and attended by an Appellant and representatives of the DAFM.

Regarding the contention that the forest had not been assessed properly at planting, the record suggests that the trees were planted in 2012. No evidence of a deficiency in the original licencing process has been provided with the appeal and the FAC did not consider that there was any reason to consider that such deficiencies existed and is, thus not satisfied that an error was made in the decision in this regard.

The harvest plan was submitted on a template provided by the DAFM and includes operational maps that identify stacking areas, fuel storage areas, and extraction routes. This was submitted in addition to specification details and a number of other maps and information. The grounds do not identify specific deficiencies in the plan provided but a number were submitted at the oral hearing. As noted, the FAC is

satisfied that the arrows at the southeastern section of the map indicate an extraction route and not a watercourse. The FAC considered that any forest road works would require a licence under the Forestry Act 2014. The FAC considered that the information provided appeared to identify the essential environmental and operational details relevant to the licence application and that the information before the DAFM was sufficient to make a decision and that an error had not been made in this regard.

The FAC also considered whether the proposed development should have been addressed in the context of the Environmental Impact Assessment (EIA) Directive. The EU EIA Directive sets out in Annex I a list of projects for which EIA is mandatory. 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. Neither afforestation nor deforestation are 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 Forestry Regulations 2017 (S.I. 191 of 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 decision before the FAC relates to the felling of 12.46 ha of commercial managed forest. The FAC concluded that the felling 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 not covered by national regulations and that screening for significant effects under the EIA Directive was not required in this case. Nonetheless, the DAFM did consider the proposal across a series of criteria and recorded a determination that the thinning should not proceed to the EIA process. The FAC considered the range and type of criteria were appropriate in combination with the other screening and assessments undertaken by the DAFM. Regarding traffic, it is likely that traffic would increase during operations but this would be for a limited time and the management of the public road network and restrictions that might be placed on specific roads falls to the local and roads authorities. In relation to archaeology, the FAC examined publicly available information and confirmed that the closest recorded monument is a considerable distance from the forest and did not consider that there was any convincing evidence that this might be impacted by the operations. The issue of water quality has already been addressed. The FAC is satisfied that referrals to prescribed bodies was not required in this case. The FAC concluded that in addition to not being a class of development included in the EIA Directive that there was no convincing evidence that the DAFM had erred in their conclusion that the proposed felling should not be subject to the EIA process.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal, and other submissions received. The FAC is not satisfied that a serious or significant error or a series of errors was made in making the decision and neither that the decision was made without complying with fair procedure. The FAC is thus affirming the decision of the Minister regarding licence TFL00500420 in line 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,

[Redacted Signature]

Vincent Upton On Behalf of the Forestry Appeals Committee