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18th March 2021

Subject: Appeal FAC075/2020 regarding licence TFL00309219

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. 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

Licence TFL00309219 for tree felling on 2.21 ha at Clonbrown & Clonroosk Little, Co. Offaly was issued by the Department of Agriculture, Food and the Marine (DAFM) on 17th February 2020.

Hearing

An oral hearing of appeal FAC075/2020 was held by the FAC on 12th March 2021. In attendance:
FAC Members: Mr. Donal Maguire (Chairperson), Mr. Derek Daly, Mr. Iain Douglas, Mr. Vincent Upton
Secretary to the FAC: Ms. Marie Dobbyn

Applicant: [REDACTED]

Appellant: [REDACTED]

DAFM Representatives: Ms. Eilish Kehoe, Mr. Ken Bucke

Decision

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notice of appeal, submission received and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to set aside and remit the decision of the Minister for Agriculture, Food and the Marine regarding licence TFL00309219.

The decision pertains to a felling licence for the thinning of 2.21 ha at Clonbrown & Clonroosk Little, Co. Offaly. The forest is comprised of four plots of pedunculate oak, Scot's pine, alder and Norway spruce and the licence would cover the first and second thinning of all species. An Appropriate Assessment screening was undertaken on 23rd May 2019. A second screening for Appropriate Assessment was included in the Inspectors Certification. This identified four sites within 15km of the proposed felling. These are Mouds Bog SAC 002331, Pollardstown Fen Sac 000396, River Barrow and River Nore SAC 002162, The Long Derries Edenderry SAC 000925. Each site is considered in turn with their qualifying

interests and conservation objectives This concluded that an Appropriate Assessment was required in relation to the River Barrow and River Nore SAC due to a direct hydrological connection. The remaining three sites are screened out and reasons are provided. The DAFM also documented a consideration of other plans and projects in combination with the proposed felling. The licence was issued on 17th February 2020.

The grounds contend that the Appropriate Assessment Screening does not comply with the requirements of the law. The grounds proceed to quote from the screening undertaken by the DAFM and states that the project requires Appropriate Assessment. The grounds proceed to quote from Finlay Geoghegan in J.Kelly -v-An Bord Pleanála & others 2013 802 JR 25/07/2014 and from 2011 Regulations in relation to the retention of records. It is submitted that it is necessary to state which catchment the development is in and where a Turlough is concerned that there is no groundwater connectivity. Text relating to general observations from the Department of Culture, Heritage and the Gaeltacht was also submitted.

In a statement to the FAC the DAFM submitted that the decision was made following their procedures. They submitted that an inspection was carried out on 27/07/20 and it was found that all the original buffer zones installed at development stage, are fully intact, fully operational and fully vegetated over. It is submitted that existing buffer zones are surrounded by a 20m corridor of native broadleaf which is fully vegetated over due to the light crowns and that when this mineralised peat soil, with natural percolation drainage is taken together with all the buffers, no effect on any designated site, Natura or otherwise is expected.

An oral hearing of the appeal was held of which all parties were notified and attended by representatives of the DAFM. The DAFM outlined the information submitted and the processing of the application. They submitted that given the nature and location of the proposal that no referrals were required in this case. The site was described as flat and with an existing setback from the watercourse in place and that it would not result in effects on any European site or on water quality. Following questioning the DAFM agreed that there were no reasons recorded as to why an Appropriate Assessment was not undertaken despite the screening procedure concluding that one should be undertaken in regards River Barrow and River Nore SAC.

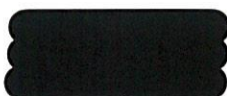
In addressing the grounds of appeal, the FAC considered the screening for Appropriate Assessment undertaken by the DAFM. Under Article 6(3) of the EU Habitats Directive any plan or project not directly connected with or necessary to the management of a European site but likely to have a significant effect 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 grounds of appeal do not identify any specific European sites, measures or effects of concern and some of the apparently quoted text was not recorded in the DAFM considerations. Four sites are identified within 15km from the proposal by the DAFM and the FAC confirmed the location of these sites using information provided by the NPWS and EPA. The forest to be thinning is situated in the Figile SC 020 Subcatchment of the Barrow Catchment and the western block adjoins a watercourse, Figile, that forms

part of the FIGILE_050 waterbody which has been assigned a Good status under the Water Framework Directive for 2015-2018. The River Barrow and River Nore SAC lies c.10km to the south and is connected to the Figile River. The Long Derries Edenderry SAC lies 8km upstream from the proposal and Mouds Bog SAC and Pollardstown Fen SAC lies c. 15km to the southeast and in a separate subcatchment to the proposed thinning. Having regard to the record of the decision, the DAFM concluded that the proposal should proceed to Appropriate Assessment in regards the River Barrow and River Nore SAC but none was undertaken. The statement submitted by the DAFM appears to contradict this conclusion but is based on an inspection undertaken after the decision was issued. The FAC concluded that this represented a serious error and that the decision should be remitted to the Minister to undertake and record a new screening for Appropriate Assessment under Article 6(3) of the EU Habitats Directive.

While not directly noted in the grounds the FAC further 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 thinning of 2.21 ha of 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. The DAFM did consider the proposal across a range of criteria as documented and concluded that the proposal should not be subject to the EIA process. The FAC considered the record and concurs that having regard to the nature, scale and location of the proposal that the proposal would not result in any likelihood of significant effects on the environment.

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 satisfied that a serious error was made in making the decision. The FAC is thus setting aside and remitting the decision of the Minister regarding licence TFL00309219 in line with Article 14B of the Agricultural Appeals Act 2001, as amended, to undertake a new screening for Appropriate Assessment in line with Article 6(3) of the EU Habitats Directive.

Yours sincerely,

A black rectangular redaction box covering the signature of Vincent Upton.

Vincent Upton On Behalf of the Forestry Appeals Committee

