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19<sup>th</sup> March 2021

**Subject:** Appeal FAC 031/2020 regarding licence TFL00322019

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 TFL00322019 is for the felling of 10.9 hectares at Carrigeenagowna in County Roscommon and Cloonlough and Stonepark in County Sligo. which was approved by the Department of Agriculture, Food and the Marine (DAFM) on the 18<sup>th</sup> December 2019.

#### **Hearing**

An oral hearing of appeal FAC031/2020 was held by the FAC on the 1<sup>st</sup> March 2021.

In attendance:

FAC Members:

Mr. Myles Mac Donncadha (Chairperson), Mr. James Conway,  
Mr. Seamus Neely and Mr. Derek Daly.

Secretary to the FAC:

Ms. Emma Guerin

Applicant:

[REDACTED]

DAFM Representatives:

Ms. Eilish Kehoe, Mr. Seppi Hona

Appellant:

[REDACTED]

#### **Decision**

Having regard to the evidence before it, including the record of the decision by the DAFM, the notice of appeal, submissions received including at the oral hearing, and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister regarding licence TFL00322019.

### **Licence**

The licence pertains to the felling of 10.9 ha of woodland. The felling area consists of four plots of land which were planted in 1990 and the maps and details associated with the application refer to felling 100% sitka spruce. The plots for felling range in area 4.62 ha; 2.55 ha; 0.43 ha of and 3.3 ha within an overall area of 11.28 ha and there is a watercourse on site between plots 1 and 2. The soil type underlying the project area is described as predominantly podzols in nature. The slope is described as predominantly flat to moderate.

The proposal was referred to Roscommon County Council and Sligo County Council both of whom responded with no objection to the licence and recommended conditions. The licence was also referred to the NPWS who indicated that they had no comment to make in relation to the licence.

An Appropriate Assessment screening was carried out and recorded on the file. The screening considered thirteen sites within 15km and that there was no need to expand this radius in this case and other plans and projects considered are recorded. The European sites considered were Bellanagare Bog SAC 000592; Bellanagare Bog SPA 004105; Bricklieve Mountains and Keishcorran SAC 001656; Callow Bog SAC 000595; Cloonakillina Lough SAC 001899; Cloonshanville Bog SAC 000614; Flughany Bog SAC 000497; Lough Arrow SAC 001673; Lough Arrow SPA 004050; Lough Gara SPA 004048; River Moy SAC 002298; Tullaghanrock Bog SAC 002354 and Unshin River SAC 001898. An In combination assessment was also carried out and is to be found on the file. The overall conclusion was to screen out all Natura2000 sites concluding no possibility of a significant effect on any Natura site.

The licence was issued on the 18<sup>th</sup> Decision 2019 with conditions.

### **Appeal**

There is one appeal against the decision.

The grounds contend that the Forest Service in its Screening for Appropriate Assessment found that there were Natura sites within the 15km zone of impact; that is a trigger for the requirement for Appropriate Assessment as it may have an effect and the only legal answer is that the application must be screened in for Appropriate Assessment. It is also submitted that based on the information supplied it was not possible to make a decision which was in compliance with the requirements of the Habitats Directive, and references the following judgements of the CJEU and Irish Courts Case, C-323/17 People Over Wind and Peter Sweetman v Coilite Teoranta and the test for Appropriate Assessment Screening in Irish law is as set out by Finlay Geoghegan J. in Kelly -v- An Bord Pleanála [2014] IEHC 400 (25 July 2014).

In a statement to the FAC, in regard to the granted felling application TFL00322019 the DAFM indicated that the decision was issued in accordance with procedures, S.I. 191/2017 and the 2014 Forestry Act and the Department is satisfied that all criteria as outlined in the following standards and procedures have been adhered to in making a decision on the application. The Statement from the Inspectorate indicates that the application was assessed using the relevant AA procedure applicable at the time. All Natura 2000 site within 15km were screened out and the information to this can be found on file in the AA



screening section. An in-combination assessment was also compiled and reviewed which can also be found on file. The Natura 2000 sites and the relevant qualifying interests were screened out using Habitat and Foraging tables provided to inspectors as part of the AA screening process.

An oral hearing was held of which all parties were notified and representatives of the DAFM and the applicant attended. The DAFM presented an overview of their processing of the licence and the screening assessment undertaken. Details relating to the assessment of the site was outlined; that further information was requested in relation to the access; harvest plan and a revised bio map. Based on an assessment of the information submitted a recommendation to approve the licence was made.

In considering the appeal the FAC examined the Appropriate Assessment screening undertaken by the DAFM. The FAC examined publicly available information from the EPA and NPWS and identified the same thirteen sites as the DAFM within 15km from the proposal. These are Bellanagare Bog SAC 000592; Bellanagare Bog SPA 004105; Bricklieve Mountains and Keishcorran SAC 001656; Callow Bog SAC 000595; Cloonakillina Lough SAC 001899; Cloonshanville Bog SAC 000614; Flughany Bog SAC 000497; Lough Arrow SAC 001673; Lough Arrow SPA 004050; Lough Gara SPA 004048; River Moy SAC 002298; Tullaghanrock Bog SAC 002354 and Unshin River SAC 001898. The FAC is satisfied that there is no requirement to extend this radius in this case given the scale, nature and location of the proposal.

The DAFM considered each site in turn and provided the reasons for screening all the sites out for appropriate assessment. Details of other plans and projects were also examined. The FAC is satisfied that the DAFM did not make any serious or significant error in their Appropriate Assessment screening and concurs with the conclusions reached.

At the hearing the FAC raised queries relating to the watercourse crossing the site, aspects of the assessment of the application and the request of a 25 metres setback referred to in the response from Sligo County Council. In relation to the latter, it was indicated that based on DAFM's assessment such a requirement was not considered necessary and standard guidelines would be appropriate to be adhered to. The issues were addressed by DAFM to the satisfaction of the FAC.

The FAC considered, in the first instance, whether the proposed development should have been addressed in the context of the EIA Directive. The EU 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 (nor clear-felling) 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 used. (Class I (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 FAC concludes that the licence issued for the felling of 10.9 ha, as part of a forestry operation and does not consent to a change in land use, does not fall within the classes referred to in the Directive, and similarly are not covered in the Irish Regulations (S.I. No. 191 of 2017). As such there is no breach of the EIA Directive.

In relation to hydrological connections the site is within the Boyle\_20 waterbody which has a good status for the period 2013-2018 and in relation to River Waterbodies Risk the projection is indicated not at risk. The inspector's determination was also reviewed by the FAC and is considered adequately reasoned based on the responses received and the application details. Based on the information available to it and having regard to the scale, nature and location and the conditions under which operations would be undertaken, the FAC is not satisfied that the proposal poses a significant threat to water quality.

Regarding the grounds of appeal that the Inspector answered in the affirmative to Questions 3 and 4 in the Certification Report but did not provide any evidence as to why he did so, the FAC finds Question 3 refers to the review of all referrals and submissions in this case, and the FAC finds based on the evidence before it that the project was referred to Sligo Co. Council, Roscommon Co. Council and the National Parks and Wildlife Service and responses were received from all three bodies in this case. In regard to Question 4 it refers to having sufficient information to make a sound judgement regarding the likelihood of the project having a significant effect on a European site, the FAC in considering this, again reviewed the evidence before it, including the Appropriate Assessment screening, and is not satisfied that a serious error or a series of error was not made by DAFM in the making of their determinations in this case.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal, and submissions received including at the oral hearing. 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 TFL00322019 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,

A black rectangular redaction box covering the signature of the official.

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Derek Daly On Behalf of the Forestry Appeals Committee