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18. March. 2021

**Subject: Appeal FAC 067/2020 regarding licence no TFL00412419**

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Minister for Agriculture, Food and Marine (DAFM) in respect of licence TFL00412419.

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 the parties to the appeal.

#### **Background**

Felling licence TFL00412419 was granted by the Department on 28.1.20

An oral hearing of appeal FAC 067/2020 of licence TFL00412419 was conducted by the FAC on 12.03.2021.

#### **Attendees:**

FAC: Mr Donal Maguire (Chairperson), Mr Vincent Upton, Mr Iain Douglas & Mr Derek Daly

Secretary to the FAC: Ms Marie Dobbin

DAFM representatives: Ms Eilish Kehoe and Mr Ken Bucke

The applicant, [REDACTED]

#### **Decision**

The appeal concerns a licence to clear-fell and replant 0.94 ha of forest in Moytirra East, Kilmactranny, Co Sligo. The Forestry Appeals Committee (FAC) considered all of the documentation on the file, including application details, processing of the application by DAFM, the grounds of appeal, submissions made at the Oral Hearing and all other submissions, before deciding to affirm the decision to grant this licence (Reference TFL00412419).

This project comprises 0.94 hectares of felling & reforestation. The predominant soil type underlining the project area is predominantly podzols in nature. The slope is predominantly flat to moderate (<15%). The project area does not adjoin or contain an aquatic zone(s). The vegetation type within the project area is comprised of conifer plantation.

The project file was referred to Inland Fisheries Ireland on the 12<sup>th</sup> of November 2019; they did not respond within the allotted timeframe. The NPWS & Sligo County Council were both sent the file on the 12<sup>th</sup> of November 2019. NPWS responded on the 25<sup>th</sup> of November with 'No Comment'. Sligo County Council responded on the 22<sup>nd</sup> of November, making no objection and including some standard comments.

The licence issued on 28.1.2020 and is subject to standard conditions, including adherence with the Standards for Felling & Reforestation (2019), with no extra conditions attached. There is one appeal against the decision to grant the licence. *Inter-alia*, the grounds contend that; in granting the Felling License it appears that no consultation with, or referral to, any archaeological agencies has taken place either by the Applicant or the Forest Service, that the project does not conform to the European Landscape Convention (2000) which came into effect on 1<sup>st</sup> March 2004, that no Harvesting Plan or Reforestation Plan appears to have been submitted with this application, that no referral of the application to any relevant agency appears to have taken place.

In a statement to the FAC, the DAFM contended that the file was approved after reviewing all regulatory responses and information on file. The DAFM stated that the application included all necessary maps, including a reforestation map and harvesting plan map. The application and the associated information were deemed adequate and approval was confirmed as outlined on the file.

DAFM further submitted that Appropriate Assessment (AA) screening was carried out for European sites within 15 km of the project together with an in-combination assessment, dated the 23.1.2020. The AA Screening report was completed by the DAFM Inspector and contains recommendations regarding screened European Sites. All QIs/SCIs were also considered during the screening exercise. The conclusion of the assessment was stated by the DAFM as "taking account of the project as described, the submissions received, the environmental analysis, the conditions attached, this project, in combination with other plans and projects, is in keeping with good forestry practice

Following AA screening, and pursuant to Article 6(3) of the Habitats Directive, the European Communities (Birds & Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011) (as amended) and the Forestry Regulations 2017 (S.I. No. 191 of 2017), as amended by *inter alia* the Forestry (Amendment) Regulations 2020 (S.I. No. 31 of 2020), DAFM determined that there was no possibility of the felling and reforestation project TFL 00412419 having any negative impact on the SCI's or QI's of the Bricklieve Mountains and Keishcorran SAC, the Lough Arrow SAC, the Unshin River SAC or the Lough Gill SAC because of the absence of any aquatic zone within or adjoining the project area. The Lough Arrow SPA was also screened out because of the distance between it and the project and the unsuitability of the project area for use by any species listed as a qualifying interest of the SPA.

The application was referred to a specialist DAFM archaeologist on the 3<sup>rd</sup> of Feb 2020, who reported that there were no issues of archaeological concern around the project and that there was no need for the imposition of special conditions in this regard.



Following receipt of the appeal the DAFM provided a further response from their archaeologist dated 26.3.2020. It stated that the areas proposed for felling does not contain, nor is it directly contiguous to, any Recorded Monuments/SMR sites, with the nearest such monument being a ringfort (SL 035-084) some 80m to the SSW with intervening pasture fields. The archaeologist went on to say *"As there was no readily apparent threat to this Recorded Monument, or any other archaeological site, monument or feature or a building, other structure or man-made feature of architectural or historical significance, from the proposed works, including all felling or replanting works or access and egress, I had no specific recommendations for the proposed felling beyond the normal adherence to the terms of the Forestry and Archaeology Guidelines and Forest Harvesting and Environment Guidelines. Furthermore, given the particulars of the case, referral to NMS, DCHG, was not deemed to be necessary in this instance."* He also noted that the nearest known source for the mythological associations referred to by the appellant are at their nearest point over 770m distant from the plot proposed for clear-felling and replanting. The submission also provides maps from the County Development Plan and shows the felling site outside of any designated areas.

The FAC held an oral hearing of the appeal on the 12th of March 2021. The DAFM participated electronically, the applicant participated, the appellant was not represented.

The DAFM submitted its view that the proposed project did not constitute an activity covered by the EIA Directive. The DAFM further contended that the project design, together with adherence to the conditions set out in the licence, would ensure that potential residual impacts would not arise and that the project would not prevent or obstruct the Qualifying Interests/ Special Conservation Interests of the relevant European sites.

The DAFM further contended that there are sufficient safeguards in the licence as issued and under relevant National legislation to deal with the archaeological issues of concern raised by the appellant. The DAFM stated that the standard conditions attached to all TFLs required adherence to the terms of the Forestry and Archaeology Guidelines and the Interim Standards for Felling and Reforestation as they pertain to the reporting to the relevant authorities of any new archaeological site or feature that may be discovered during licensed felling works. They also made reference to the standalone statutory obligation under the National Monuments Acts 1930 to 2014 to report newly discovered archaeological objects to the National Museum of Ireland, a designated County or City Museum in the locality, or An Garda Síochána

In addressing the grounds of appeal, the FAC noted the procedures adopted by the DAFM in its assessment of the application. In particular the FAC noted and was satisfied with the detailed response from the DAFM archaeologist on the file which dealt very comprehensively with those elements in the grounds, including why the application had not been referred to the National Monuments Service, the specific archaeological characteristics of the area, and the designations provided for under the County Development Plan relative to the felling site. The FAC concluded that the DAFM had undertaken an appropriate and acceptable consideration of the issues and is not satisfied that an error was made in making the decision in this regard.

The FAC noted that a harvest and replanting plan had formed part of the application and subsequent assessment and that three relevant national authorities (IFI, NPWS and Sligo Co.Co.) had been consulted regarding the application. The FAC considered that the replanting of the site is in keeping with the

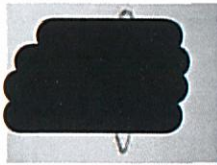
Standards for Felling and Reforestation Policy of the DAFM. The replanting will include a provision of 15% broadleaf species which will increase the diversity of the forest.

With regard to landscape, the FAC noted that there were other forestry plots of varying heights and ages proximate to the application and that the proposed felling was not likely to have a significant impact on the overall landscape as it currently exists.

In regard to other matters, the FAC noted the approach taken by DAFM in listing the qualifying interests and conservation interests for each Natura site within 15 kms and assessing the project design, location of the project and possible pathways to the listed designated sites. The proposal involves the felling of a managed forest and there is no evidence of protected habitats or species being present on the site. The FAC concurs with the conclusions reached by the DAFM and is not satisfied that an error was made in the Appropriate Assessment screening undertaken.

In deciding to affirm the decision to grant the licence, 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 Donal Maguire.

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Donal Maguire on behalf of the Forestry Appeals Committee