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19th March 2021

Subject: Appeal FAC047/2020 in relation to felling licence TFL00421419

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

Felling licence TFL00421419 was issued by the Department of Agriculture, Food and the Marine (DAFM) on the 16th January 2020.

Hearing

An oral hearing of appeals FAC047/2020 was held by the FAC on the 9th March 2021.

FAC:	Mr Des Johnson (Chairperson), Mr Dan Molloy & Mr Luke Sweetman
Secretary to the FAC:	Mr Michael Ryan
Appellant:	[REDACTED]
Applicant:	[REDACTED]
DAFM representatives:	Ms Eilish Kehoe, Mr Jhan Crane

Decision

The FAC considered all of the documentation on the file, including application details, processing of the application by the DAFM, the grounds of appeal, submissions made at the Oral Hearing and all other submissions, before deciding to affirm the decision to grant felling licence TFL00421419.

This licence is for the thinning and subsequent clearfelling of 5.25ha across two plots, east and west of a public road, at Gartylough, Co.Cavan. The species to be felled is 100% Sitka spruce and the proposed restock species is 90% Sitka spruce and 10% Additional Broadleaves in both plots. The National Soils layer on the Environmental Protection Agency (EPA) website indicates the underlying soil type is Surface-water/Ground-water Gleys. The information supplied by the DAFM states 'predominately Podzols' and the slope is predominantly flat to moderate (<15%). Garty Lough is c.100m to the west of the proposal and the Cullies stream flows southwest at a distance of c.80m from the eastern boundary of the project site. The site is in the Erne Catchment, the Cullies_SC_010 Sub-Catchment, and the Cullies_010 River Sub-Basin. The Cullies_010 River Waterbody was assigned 'Good' status and Garty Lough Lake Waterbody assigned 'Moderate' status by the EPA in the 2013-2018 reporting period. Both waterbodies were deemed to be 'At Risk' with agriculture listed as a significant pressure in both cases and urban waste water also listed for the Cullies_010.

The applicant submitted a felling licence application with a Harvest Plan and associated maps. In completing a desk-assessment of the licence application, the DAFM carried out a Stage 1 Appropriate Assessment (AA) screening that considered two Natura 2000 sites within 15km of the proposal. The likely zone of impacted was not extended in this instance. Both Natura sites were screened out for Stage 2 AA for the following reasons:

- **Lough Oughter and Associated Loughs SAC:**
 - The absence of any significant relevant watercourse(s) within or adjoining the project area.
- **Lough Oughter SPA:**
 - The unsuitability of the project area for use by any species listed as a qualifying interest of the Natura site.
 - Other factors, the project is 7.1 km from the SPA and is outside the foraging distances for any of the Qualifying Interests

The DAFM considered the potential for the proposed development to contribute to an in-combination impact on Natura sites. They consulted various planning websites along with their own records for both

forestry and non-forestry plans and projects in the general vicinity of the Gartylough Townland. The DAFM concluded that that the proposal, when considered in combination with other plans and projects, will not give rise to the possibility of a significant effect on any Natura site.

The DAFM referred the application to the Cavan County Council and the National Parks & Wildlife Service (NPWS). The County Council responded on the 12th December 2019 with a number of recommendations relating to the retention of native trees, trimming potentially hazardous roadside trees, traffic management during operations, the size and weight of felling machinery and haulage vehicles, management of debris generated by the planned works, roadside utilities and repair of damage caused to the public road.

The NPWS responded on the 18th December 2019 stating they had no comment to make on the application and attaching an Appendix with general points of relevance to the DAFM as a public authority in the context of the EC (Birds and Natural Habitats) Regulations 2011.

The licence issued on the 16th January 2020 and is exercisable for 10 years. It is subject to relatively standard conditions (a) to (g) plus (h) i) strictly adhere to the Standards for Felling and Reforestation (DAFM, 2019). These standards replace existing Forest Harvesting and the Environment Guidelines (2000). ii) Ensure public safety at all times.

There is one appeal against the licence. The written grounds of appeal were considered in full by the FAC, the following is a summary of the issues raised:

- A Natura Impact Statement and AA are required.
- It is merely necessary to determine that there may be a significant effect to trigger Appropriate Assessment (Kelly v An Bord Pleanála).

The DAFM submitted a response to the grounds of appeal in a written statement to the FAC:

- *The grounds of appeal have been read and considered. The application for felling licence TFL00421419 was processed according to Forest Service Guidelines and Standard Operating Procedures relevant at the time. Including any 'in-combination' effect of other forestry and non-forestry projects in the vicinity of TFL00421419 which is highlighted in screening notes.*
- *The proposed harvesting operations have been considered according to current AA.*

There are two Natura 2000 sites within 15km of the project area:

- *Lough Oughter SAC (6km) - the project area is not hydrologically linked to the SAC and is beyond the range of influence according to Forest Service 'Bird Foraging Table', 'Habitat Table'.*
- *Lough Oughter SPA (7.1km) - the project area is not hydrologically linked to the SPA and is beyond the range of influence according to Forest Service Bird Foraging Table and Habitat Table.*

Considering all of the above, the application for felling licence TFL00421419 should be screened out.

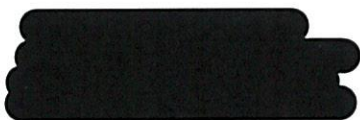
The FAC held an Oral Hearing on the 9th March 2021. The FAC members sat remotely at this hearing. The appellant did not participate and the applicant and the DAFM participated remotely. The DAFM outlined the background to their decision to issue the felling licence and stated the area referenced on their written statement of facts (5.14ha) was different to the licenced area (5.25ha) because the application map had been digitised onto iFORIS, which is more exact than the GIS used by the applicant. They detailed the AA screening procedure and the conclusions reached and stated there are no watercourses within the application site. They stated there is a stream to the southwest but no pathway exists from the project lands and that the reasons for screening out the Natura sites were the lack of hydrological connectivity and the fact that their Qualifying Interests would not be impacted by the proposed project. The applicant explained that he had planted the proposed harvesting site 30 years ago as part of his pension plan and now that he was of pension age he wanted to fell the trees and he can't understand why this was not allowed. He stated he can't understand why people hundreds of kilometres away were allowed to appeal a licence. The FAC stated that the appellant has a legal right as per the appeals system and they had submitted specific grounds of appeal and were entitled to do so. Responding to FAC questions, the DAFM stated that the application site is underlain by Gley soils but that the dropdown menu in iFORIS does not provide this option and that 'Podzols' was selected as the closest description. They confirmed that the correct soil type was known during the desk assessment and had been identified using a detailed soils layer on iFORIS. The FAC queried why the majority of the recommendations made by Cavan County Council had not been included as part of the licence conditions. The DAFM stated that, having considered the size and scale of the proposal, the fact that there is very little forestry in the area, the type, quality and alignment of the road, they did not deem it necessary to include all of the County Council's recommendations. They stated the County Council had not prescribed specific weight limits but that these would have been included in the licence conditions if they had done so. The DAFM confirmed that the western plot is accessed from the south and that the eastern plot's access point was included on the bio map. In closing remarks the applicant stated that the grounds of appeal are not valid for blocking the licence. The DAFM submitted that this application was

processed when the current AA procedure had just been introduced but that, if screened today, their original decision would stand.

In addressing the grounds of appeal, the FAC had regard to the contention that a Natura Impact Statement should be submitted and a Stage 2 AA carried out. The FAC noted that the DAFM completed a Stage 1 AA screening in line with the requirements of the EU Habitats Directive and considered the potential for the proposed development to have a significant effect on Natura sites within a 15km radius. The DAFM identified two Natura sites within this distance and both of these sites were screened out for Stage 2 AA with reasons given. The DAFM considered the proposal's potential to contribute to a cumulative effect on Natura 2000 sites and concluded that the licenced project, in combination with other plans and projects, would not give rise to the possibility of a significant effect on any Natura site. The FAC considers that there is no convincing reason to disagree with the conclusion reached by the DAFM in their AA screening and does not consider the submission of a Natura Impact Statement or the completion of a Stage 2 AA necessary in this instance.

Based on the information before it, and in the circumstances outlined above, the FAC is satisfied that the DAFM did not make a serious or significant error, or series of errors, and complied with fair procedures, in reaching their decision to issue felling licence TFL00421419. In deciding to affirm the decision of the Minister, the FAC considers 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 Luke Sweetman.

Luke Sweetman on Behalf of the Forestry Appeals Committee

