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26 March 2021

**Subject:** Appeal FAC 166/2020 regarding licence TFL00322519

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 14A (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 TFL00322519 for felling and replanting of 16.87 ha, in Sonvolaun and Glentarraun, Co Mayo was approved by the Department of Agriculture, Food and the Marine (DAFM) on 5 March 2020.

#### **Hearing**

An oral hearing of appeals FAC 166/2020 of which all parties were notified, was held by a division of the FAC on 23 March 2021.

#### **In attendance**

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|-----------------------|---|
| FAC Members:          | Mr Des Johnson (Chairperson), Mr Luke Sweetman and Mr Donal Maguire |
| Secretary to the FAC: | Mr Michael Ryan   |
| Appellants:           | [REDACTED]  |
| Applicant:            | [REDACTED]  |
| DAFM Representatives: | Ms Eilish Kehoe and Mr David Ryan                                   |

#### **Decision**

The appeal concerns a licence for the felling and replanting of 16.87 ha at Sonvolaun and Glentarraun Co Mayo. 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 the licence (Reference TFL00322519).

The site is in the Water Framework Directive river sub-basin Lissydaly Stream\_010 and the site drains eastwards to the Lung River. Although close by, it does not drain to the Moy River system. The project area adjoins an aquatic zone, the vegetation types within the project comprise conifer and broadleaf plantations. WD1. The underlying soil type is predominantly stable gley, the slope is mainly flat to moderate (<15%). There is access at two points and the roading to the site is described as being good.

The application was referred to Mayo Co. Council, who replied on the 17.04.2019 raising no objections or comments. The application was also referred to National Parks & Wildlife Service (NPWS), who responded on the 27.06.2019, raising no objection but pointing out the proximity of the development to Lough Gower, a pNHA site, located 650m to the North. The NPWS requested that various conditions be attached to the licence to control emissions generally and water runoff in particular.

The licence issued on 05.03.20 and is subject to standard conditions with just one extra condition requiring that the applicant 'Strictly adhere to the Standards for Felling and Reforestation (October 2019).

There is one appeal against the decision to grant the licence. Inter-alia, the grounds contend that "The Appropriate Assessment Screening does not comply with the requirements of the law". To substantiate this assertion the appellant further states that "It is our submission that to comply with the Directive, Regulations and the Judgements of the CJEU and the High Court it is necessary at the minimum, where a waterbody is concerned, to examine the catchment map and to state which catchment the development is in", and that "It is our submission that to comply with the Directive, Regulations and the Judgements of the CJEU and the High Court it is necessary at the minimum, where a Turlough is concerned to show evidence that there is no groundwater connectivity with the development lands" and finally, "it is our submission that the FAC must comply fully with the attached document; *General observations from the National Parks and Wildlife Service of the Department of Culture. Heritage and the Gaeltacht in relation to forestry application referrals*".

In a written statement to the FAC, the DAFM submitted that Appropriate Assessment (AA) screening was carried out by the DAFM for European sites within 15 km of the project together with an in-combination assessment. The AA Screening report was completed by the DAFM Inspector and contains recommendations regarding screened European Sites. All Qualifying Interest (QIs)/Special Conservation Interests (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 TFL00322519 having any negative impact on the SCI's or QI's of Carrowbehy/Carher Bog SAC, Drumalough Bog SAC, Errit River SAC, River Moy SAC or Urlaur Lakes SAC because they were in different catchments or sub basins from the project and there was no hydrological connectivity. Distance from the project, in excess of the various foraging tables for protected species, was also cited. An in-combination assessment was presented on file dated 26.02.2020 in which the DAFM contended 'that this project, 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 FAC held an oral hearing of the appeal on the 23rd of March 2021. The DAFM participated electronically, the applicant also attended electronically, the appellant was not represented.

The DAFM 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 QIs/SCIs of the relevant European sites. They pointed out that the felling plan incorporated phases of thinning and clear felling over an eight-year period and drew the committee's attention to the additional planting of broadleaf species along the margins of the adjacent watercourse which would further enhance biodiversity.

In addressing the grounds of appeal, the FAC noted the procedures adopted by the DAFM in its screening, listing the QIs and conservation interests for each site and assessing the project design, location of the project and possible pathways to the listed designated sites. The FAC consulted publicly available information from the Environmental Protection Agency and NPWS and identified the same sites as the DAFM, which does not include any Special Protection Areas. The proposal involves the phased thinning and felling of a managed forest and there is no evidence of protected habitats or species being present on the site.

The DAFM confirmed to the FAC that the watercourse to the NE of the site, drains into the Upper River Shannon River Basin, and is more than 15km distant from any Natura site. They contended that such a distance together with the terms of the licence made any significant hydrological connection to any downstream SAC or SPA effectively impossible. The DAFM inspector confirmed that he had inspected and fully assessed the site on the 21.6.2019. He also confirmed to the FAC that he was satisfied that the licence conditions fulfilled the recommendations made by NPWS in their response. The FAC concurs with the conclusions reached by the DAFM, including their consideration of in-combination effects and is not satisfied that an error was made in the Appropriate Assessment screening undertaken.

The NPWS were consulted and the appellant did not specify which particular elements of the NPWS 'submission document' the grounds refer to. The FAC could not determine any error on the DAFM's part in this regard.

With regard to the issue of turloughs raised in the grounds, the FAC noted that there was no evidence of the occurrence of turloughs in the vicinity of the site, or of the site having any connectivity, via

groundwater, to any such features, thus the FAC did not find that any error had been made concerning these grounds in arriving at the licence decision.

The FAC did note a minor clerical error in the written DAFM submission. On page 18 of the Inspector's Certification Report, the Urlaur River SAC was screened out, but no reason was set down. This omission was corrected in other sections of the AA screening assessment documentation. The FAC were satisfied that this was a minor clerical or IT error and that it had no bearing on the substance of the decision.

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 large black rectangular redaction box covers the signature area, obscuring the name and any handwritten notes.

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On behalf of the Forestry Appeals Committee