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31 August 2021

**Subject:** Appeal FAC 019/2021 regarding licence RN16-FL0020

Dear [REDACTED]

I refer to the 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 RN16-FL0020 for felling of 4.77ha, in Mote Demesne, Co Roscommon was approved by the Department of Agriculture, Food and the Marine (DAFM) on 6 January 2021.

#### **Hearing**

A hearing of appeal FAC 019/2021 of which all parties were notified, was held by a division of the FAC on 26 August 2021.

#### **Presiding:**

FAC Members: Mr Des Johnson (Chair), Mr Donal Maguire and Mr Dan Molloy

#### **Decision**

The Forestry Appeals Committee (FAC) considered all of the documentation on the file, including application details, processing of the application by DAFM and the grounds of appeal and all other submissions, before deciding to affirm the decision to approve the licence (Reference RN-FL0020).

The proposal is for the clearfelling and restocking of a stated site area of 4.77ha at Mote Demesne, Co. Roscommon. The current stock is predominantly Sitka spruce and Ash, planted in 1963, and there is a small plot (0.01ha) planted with Norway spruce and Japanese larch in 2002. Proposed restocking would be with Douglas fir (95%) 4.30ha, and Oak (5%) 0.23ha. Open space of 0.24ha would be provided. The site soils are stated to be shallow brown earth/grey, brown podzolics with rendzinas and lithosols, the slope is gentle, and the habitat is Conifer plantation and mixed Broadleaf/conifer woodland. There is no downstream hydrological connection identified. No fertilisers are proposed, but herbicide would be applied as necessary. The project is stated to be in the River Sub-Basin Hind\_020, which has approximately 21% forest cover.

The DAFM carried out Appropriate Assessment Screening (AAS) dated 04.01.2021. This states that the project is in the Upper Shannon (100%) catchment, the Hind\_SC\_010 (100%) Sub-catchment, the Hind\_020 (100%) Sub-basin. Natura sites within a 15km radius are examined with 14 identified (10 Special Areas of Conservation (SAC) and 4 Special Protection Area (SPAs)) - Lough Ree SAC, Lough Ree SPA, Ballinturley Turlough SAC, River Suck Callows SPA, Lisduff Turlough SAC, Lough Fushinagh SAC, Corbo Bog SAC, Four Roads Turlough SPA, Four Roads Turlough SAC, Lough Croan Turlough SAC, Lough Croan Turlough SPA, Fortwilliam Turlough SAC, Aughrim (Aghrane) Bog SAC and Ballygar (Aghrane) Bog SAC. All sites are screened out for Stage 2 Appropriate Assessment. The SPAs are screened out for reason of separation distance. The SACs are screened out for reasons of the absence of direct upstream connection, pathway, hydrological or otherwise, and the project area is in separate waterbody catchment with no upstream connection or pathway, hydrological or otherwise. (No reason is given for screening out Four roads Turlough SAC). There is an 'In-combination' report dated 17.12.2020. This lists non-forestry projects as including dwellings, domestic extensions, slatted shed and storage shed. Forestry projects listed are afforestation (3), roads (1), private felling (1) and Coillte felling (5). The River Sub-Basin Hind\_020 has approximately 21% forest cover. Following Appropriate Assessment screening the DAFM determined that it cannot be excluded, based on objective scientific information, that project RN-FL0020 will have a significant effect, either individually or in combination with other plans and projects (this appears to be a typographical error as all of the information otherwise contained in the screening and in-combination reports suggests that significant effects can be excluded. The Statement of Facts submitted by DAFM in response to the grounds of appeal supports this).

The licence issued on 06.01.2021 and is exercisable until 31.12.2022. It is subject to standard conditions plus other conditions requiring:

- Retention of all broadleaves where safe to do so
- Adherence to specified Standards, Guidelines, Manual and Policy, including Appendix 21 of the Forestry Service Manual (DAFM 2015), which sets out an agreed Protocol for Hen Harrier developed by the Forestry Service and the NPWS, regarding potential disturbance operations.

There is a single appeal against the decision to grant the licence. The grounds of appeal contend that the application erroneously states that there were no management constraints to this application, and that there is a green environmental risk to water & soils and biodiversity. The site is elevated and hydrologically connected to the Lough Ree SAC and SPA via a small turlough immediately below the site that connects to the River Hind (which is c400m from the site) via a series of underground and overground streams. The River Hind enters Lough Ree and the River Shannon 6km from the site. The statement that there is no risk to water & soils is incorrect. The Forestry Service does not indicate whether Appropriate Assessment or screening has taken place. The site is part of the Mote Park Forest, which is an old woodland site and part of the Crofton Demesne. This area of forest has been agreed for management under the Sustainable Forest Management (SFM) Plan for Mote Park as an area of continuous forest cover. The site is the highest part of the forest and is highly visible. Forests in the area contain numerous recreational trails and are heavily used for walking and cycling. Protected wildlife species include the Red Squirrel. The entire forest area of 240ha is the subject of a current and ongoing consultation process with Coillte regarding SFM, but no plan has been agreed. Mote Park Conservation Group was formed to engage with Coillte for this purpose. The Group were

surprised to see this application submitted as it is in breach of public consultation and pre-empts the outcome of the consultation process. Copies of correspondence between Mote Park Conservation Group and personnel in Coillte are submitted.

In response, the DAFM state that the proposed development was subject to DAFM's Appropriate Assessment screening procedures (Nov 2019), and the related screening document is on file. The DAFM concluded that, when considered in combination with other plans and projects as identified in the pre-screening report, the proposed development will not give rise to the possibility of a significant effect on the relevant screened European sites. Appropriate Assessment was not required. Standard procedures were followed in respect of issuing referrals, and Roscommon County Council were requested to give comments and observations. The appellant was informed of the application before any licence has been awarded for the proposed development. DAFM are not privy to any specific arrangements, ongoing communications or other arrangements between Coillte and any third parties such as Mote Park Conservation Group. The DAFM has no regulatory or other role in relation to voluntary forest management schemes entered into by the applicant. It is a matter for the applicant whether or not to utilise a felling licence once granted.

In a follow-up submission the appellant states that the Appropriate Assessment screenings fail to take into account the fact that the site is located in an area underlain with karst limestone bedrock, and is hydrologically connected to Lough Ree SAC and SPA, as indicated in the grounds of appeal. The submission encloses a sketch and photograph illustrating the turlough referred to.

The FAC heard the appeal on 26 August 2021. The subject site is on elevated lands, on the western periphery of a larger block of forestry. It is bounded to the north and east by agricultural lands, and to the south and west by coniferous forestry. The larger block of forestry contains a series of tracks which appear to be available for recreational use. The subject site of 4.77ha is clearly visible from public roads, particularly from the north and west. There is a patch of discoloured land approximately 200-300m north of the project lands coinciding with the area stated by the appellant to be a turlough.

The appellant contends that there is a hydrological connection between the project lands and Lough Ree, as the lands are hydrologically connected to a turlough which is to the north and then to the Hind River which, in turn, connects to Lough Ree SAC and SPA. Examination of publicly available EPA and google maps websites, shows that the area claimed to be a turlough is approximately 200-300m north of the project lands, and that the Hind River is approximately 1km to the north of the project site, with agricultural fields and a public road intervening. Lough Ree SAC is shown as 2710m directly separated and Lough Ree SPA is 4710m directly separated from the project lands. The qualifying interests for Lough Ree SAC are natural eutrophic lakes, semi-natural grasslands, active and degraded raised bogs, alkaline fens, limestone pavement, bog woodland, alluvial forests, and the otter. The qualifying interests for Lough Ree SPA are little grebe, whooper swan, wigeon, teal, mallard, shoveler, tufted duck, common scoter, goldeneye, coot, golden plover, lapwing, common tern, and wetland and waterbirds. The FAC considered the nature and scale of the proposed development, its location relative to existing water features, the separation distances from Natura 2000 sites including Lough Ree SAC and SPA and found that there is no reason to conclude that the DAFM screening conclusion and determination of no likelihood of significant effects is incorrect, or that there was any significant or serious error in the making of the decision to grant the licence in this regard.

The DAFM Appropriate Assessment screening omits to give a reason for screening out Four Roads SAC. The qualifying interest for this Natura 2000 site is 'turloughs'. Reference to the EPA publicly available website shows this site at a separation distance of approximately 11270m and with not direct downstream hydrological connection. Having regard to the nature and scale of the proposed development, the separation distance, the qualifying interest of the Four Roads SAC and the absence of any evidence of a direct hydrological connection between the project lands and the Natura 2000 site, the FAC concluded that the conclusion of no likelihood of significant effects is correct and that no significant or serious error was made in the making of the decision in this regard.

The appellant refers to ongoing consultation between the applicants and Mote Park Conservation Group, and that the current application pre-empts the outcome of those consultations. The FAC concluded that any such consultations are non-mandatory and would not be a reasonable basis for refusing to grant the licence. In this regard, the FAC concluded that no significant or serious error was made in the making of the decision. The implementation of any licence granted would be a matter for the applicants.

The appellant refers to the existence of the Red Squirrel in the area, but there is no specific information submitted regarding the presence of the Red Squirrel on the subject lands or reasons given as to how the species would be adversely affected by the proposed development. Based on the information before it, the FAC concluded that there was no significant or serious error made in the making of the decision in relation to this issue.

Based on the information before it, the FAC concluded that there was no significant or serious error made in the making of the decision to grant the licence, or that fair procedures were not followed. In deciding to affirm the decision of the Minister 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 Des Johnson.

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Des Johnson on behalf of the Forestry Appeals Committee