



[Redacted]

**2<sup>nd</sup> December 2020**

**Subject:** Appeal FAC 209/2020 regarding licence DL27-FL0013

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 DL27-FL0013 for felling and replanting of forest on 10.12 ha at Crowanrudda, Crowkeeragh, Co. Donegal, was approved by the Department of Agriculture, Food and the Marine (DAFM) on 3<sup>rd</sup> of April 2020.

#### **Hearing**

An oral hearing of appeal FAC 209/2020 was held by the FAC on 25th November 2020 at the Killeshin Hotel, Dublin Rd, Portlaoise, Co. Laois.

#### **In Attendance at Oral Hearing:**

Department Representative(s):	Mr. Frank Barrett, Ms. Eilish Keogh,
Appellant:	[Redacted]
Applicant / Representative(s):	[Redacted]
FAC Members:	Mr. John Evans (Deputy Chairperson), Mr. Vincent Upton, Mr. Seamus Neely and Mr. James Conway.
Secretary to the FAC:	Ms. Marie Dobbyn.

#### **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 set aside and remit the decision of the Minister regarding licence DL27-FL0013.

The licence pertains to the felling and replanting of an area of 10.12 ha at Crowanrudda, Crowkeeragh, Co. Donegal. The forest is currently composed of Sitka Spruce and Lodgepole Pine, with some small areas bare planted. Replanting is to be of Sitka spruce and Lodgepole Pine. The site has an underlying soil type that is approximately comprised of Blanket Peats (99%) & Podzols (Peaty), and Lithosols, Peats (1%). The slope is predominantly steep 15-30%. The habitat is predominantly WD4. The site is proximate to the Ballaghdoe\_010 waterbody.

The proposal was referred to Donegal County Council and Inland Fisheries Ireland and there is a response on file from Inland Fisheries Ireland. The application included a harvest plan, including maps, and general environmental and site safety rules related to the operations. It also includes a pre-screening report for Appropriate Assessment. The DAFM undertook and documented an appropriate assessment screening dated 2<sup>nd</sup> April 2020. This found nine European sites within 15km and found that there was no reason to extend this radius in this case.

The screening determined that an appropriate assessment was not required regarding five SACs ([190] Slieve Tooley/Tormore Island/Loughros Beg Bay SAC; [189] Slieve League SAC; [197] West Of Ardara/Maas Road SAC; [191] St. John's Point SAC; [165] Lough Nillan Bog SPA) by reason of there being no possibility of cumulative impacts on the Natura sites, and the location of the project area being within a separate water body catchment to that containing the Natura site, with no upstream connection, and the subsequent lack of any pathway hydrological or otherwise.

The screening also determined that an appropriate assessment was not required regarding four SPAs ([4150] West Donegal Coast SPA; [4115] Inishduff SPA; [4110] Lough Nillan Bog SPA; [4090] Sheskinmore Lough SPA) by reason of there being no possibility of cumulative impacts on the Natura sites, and the separation distance between the Natura site and the project.

An In-Combination Effects search is on file stating that other planning records were searched for on the 3<sup>rd</sup> of April 2020. This in-combination statement concluded no potential for in-combination effects.

The decision to grant the Licence is subject to one appeal. The grounds of appeal include; breach of Article 4(3) of the EIA Directive 2014/52/EU, through failure to carry out screening for EIA; breach of Article 4(4) of the EIA Directive 2014/52/EU through failure to consider all projects in a Coillte FMU as a project; breach of Article 4(5) of the EIA Directive 2014/52/EU through similar grounds; that the license and its associated operations take inadequate consideration of the Water Framework Directive River Basin Management Plan for Ireland 2018-21.

In correspondence dated the 12<sup>th</sup> of May, the FAC sought further information from the appellant specifically requesting a written submission stating to which class of development listed in the EIA Directive does felling belong to. The appellant responded but did not state the class of development included in the EIA Directive to which felling and reforestation belong.

At oral hearing DAFM summarised their approach to the licencing decision and outlined the basis for licence conditions. The applicant provided information on their activities, including field assessment, that formed the basis for their application.

In addressing the grounds of appeal, the FAC considered, in the first instance, the contention that the proposed development should have been addressed in the context of the EIA Directive.

In its statement to the FAC, the DAFM submitted that the standard operational activities of clear-felling and replanting already established forests areas are not included under the specified categories of forestry activities or projects for which screening for EIA is required as set out in Schedule 5 Part 2 of the Planning and Development Regulations 2001, as amended, and in Regulation 13(2) of the Forestry Regulations 2017. The DAFM contended that screening for EIA was not required in this case and that breaches of Article 4(3), 4(4), and 4(5) had not occurred. At the oral hearing the DAFM reasserted its contention that the proposal does not include a class of project covered by the EIA Directive or by National legislation.

In considering this aspect, the FAC notes that the EU EIA 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 is 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 use” (Class 1 (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 felling of trees, as part of a forestry operation, with no change in land use, does not fall within the classes referred to in the Directive, and is similarly not covered by the Irish regulations (S.I. 191 of 2017). The decision under appeal relates to a licence for the felling and replanting of an area of 10.12 ha. The FAC does not consider that the proposal comprises deforestation for the purposes of land use change and neither that it falls within the classes included in the Annexes of the EIA Directive or considered for EIA in Irish Regulations. Therefore that FAC agrees that screening for EIA was not required in this case and that breaches of Article 4(3) and 4(4) had not occurred.

The FAC considered the contention in the grounds of appeal that in granting the licence DAFM had taken inadequate consideration of the objectives of the WFD River Basin Management Plan. In doing so, the FAC noted the content of the DAFM statement, which outlines the checks and balances applied during the evaluation of felling licence applications, in relation to the protection of water, as set out in the DAFM document *Forests & Water: Achieving Objectives under Ireland's River Basin Management Plan 2018-2021* (2018). The FAC also considered the submission from Inland Fisheries Ireland in relation to this application, and the inclusion in the licence of a number of conditions addressing the management of surface water and drainage on the site, planting and operations in proximity to the aquatic zone, and the prevention of silt, sediment and other contaminants into receiving aquatic zones or watercourses. The Appellant did not submit any specific information regarding effects on water quality or pathways related to the proposal. Based on the information available to it, the FAC is satisfied that the proposal does not pose a significant threat to water quality.

The FAC noted the content of the DAFM statement in relation to the proximity of the site to the south of the Coguish Bog pNHA 001938, which the appellant observes as containing Annex I habitat under the Habitats Directive, specifically Blanket Bog and Wet Heath. The statement cites a NPWS publication that notes that the area is a mixture of areas, some which are badly damaged by extensive peat cutting and erosion. The DAFM statement notes that felling and reforestation is not mentioned as a threat to the bog in the report. Having considered the above the FAC concludes that the project alone would not be likely to impact on the Annex I habitat.

In relation to the appellants stated grounds of appeal that the Licence conditions do not provide a system of protection for wild birds during the period of breeding and rearing consistent with the requirements of Article 5 of the Birds Directive, the FAC had regard for the statement provided by DAFM, and sought further clarification on the response to this ground of appeal at the oral hearing. The FAC understands the DAFM position to be that as a general principle, a licence should not contain conditions that refer to obligations placed on a licence holder through legislation other than that under which the licence is granted. Those obligations continue to apply to the licence holder, unless the license specifically relieves the licence holder of the obligation, which does not apply in this case. In this instance, the licence holder must obtain the necessary permits as required under law to ensure the protection of wild birds during the period of breeding and rearing. The FAC concurs with this view.

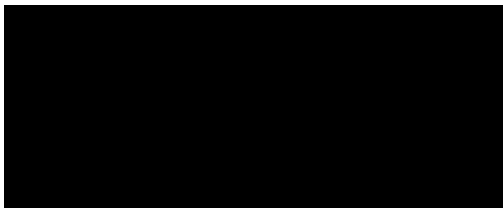
On the final grounds of appeal, that there is an implied duty to give reasons for a negative screening decision under the Environmental Impact assessment Directive, the FAC noted that the DAFM statement refers to the earlier arguments in relation to the applicability of the EIA directive and concludes that these also apply in this instance.

In relation to Appropriate Assessment Screening, the FAC noted that the qualifying interests listed in the assessment were truncated on the DAFM documentation, and that DAFM drew attention to this

shortcoming in their statement while also providing an updated version of the document with the errors rectified. The FAC considered that this was not a significant error as there was no possibility of any significant effects on the designation sites for the reasons given in the DAFM assessment.

The DAFM statement also drew attention to the fact, noted by the FAC, that in carrying out screening for likely in-combination effects, the DAFM had relied exclusively on the applicant's in-combination statement before making its decision, before subsequently carrying out a separate in-combination assessment that was consistent with that of the applicant. The FAC has formed the opinion that this represents a significant error in the making the decision.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal, in addition to submissions made by parties to the appeal, including at the oral hearing. In the above circumstances, the FAC concluded that the decision of the DAFM regarding DL27-FL0013 should be set aside and remitted to the Minister to carry out a screening for appropriate assessment under Article 6 of the Habitats Directive of the likely significant effects of the proposal in combination with other plans and projects before a new decision is made.



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John Evans, On Behalf of the Forestry Appeals Committee