



[REDACTED]

3<sup>rd</sup> December 2020

**Subject:** Appeal FAC016/2020 regarding licence LS01-FL0076

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 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 LS01-FL0076 for felling and replanting of 3.64 ha at Ballynahimmy, Castlecuffe, Co. Laois was approved by the Department of Agriculture, Food and the Marine (DAFM) on 4<sup>th</sup> February 2020.

**Hearing**

An oral hearing of appeal FAC016/2020 was held by the FAC on 20<sup>th</sup> November 2020. In attendance:  
FAC Members: Mr. Donal Maguire (Chairperson), Mr. Derek Daly, Ms. Claire Kennedy, Mr. Vincent Upton

Secretary to the FAC: Ms. Marie Dobbyn

Appellant: [REDACTED]

Applicant's Representatives: [REDACTED]

DAFM Representatives: Mr. Anthony Dunbar, Ms. Eilish Kehoe

**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 LS01-FL0076.

Licence pertains to the felling and replanting of 3.64 ha of forest planted in 1972. The forest is currently comprised of Sitka spruce with smaller areas of Japanese larch and lodgepole pine and would be replanted with Sitka spruce. The site is described as being on a moderate slope with a peaty gley soil type and in the Ballynacarrig 010 (100%) basin. The DAFM undertook a screening for appropriate assessment and found there were five sites within 15km and no reason to extend this radius in this case.

One site was screened in due to proximity and an appropriate assessment report and determination were prepared. The application was referred to the NPWS which responded stating that it had no comment on the proposal and provided a document with general observations on forestry applications, including information on the obligations on public authorities. The application was also referred to the Laois County Council which did not respond. The licence was issued with conditions including a number that relate to the mitigation measures identified in the appropriate assessment report and determination.

There is one appeal against the decision. The grounds contend that the appropriate assessment screening does not comply with the law. The grounds proceed to submit suggested shortcomings in the information and evidence provided in text attribute to a DAFM screening. The grounds further submit text regarding obligations on public authorities, the identified and provision of information and the consideration of measures designed to avoid or reduce the harmful effects of the plan or project on European sites. A text attributed to the Department of Culture, Heritage and the Gaeltacht was also submitted.

In a statement to the FAC, the DAFM stated that they are satisfied that the decision met their criteria and guidelines and that they confirm the licence. They submit that they followed the current DAFM AA Screening guidance document and considered Natura 2000 sites within 15km. They submitted that they considered the application information provided by the Applicant including harvesting and operational procedures, maps and a pre-screening report. They submitted that the qualifying interests of European sites were truncated in the original screening form. They submit that the Slieve Bloom Mountains SPA 004160 was screened in for appropriate assessment on a precautionary basis and that an appropriate assessment report and determination had been prepared and states,

*“DAFM determined, pursuant to Regulation 42(16) of the European Communities (Birds and Natural Habitats) Regulation 2011 (as amended) and based on objective information, that the project (LS01-FL0076), either individually or in-combination with other plans or projects, will not adversely affect the integrity of any European site. A felling licence was issued for the clearfell and reforestation project having considered the comments and observations of referral bodies who submitted information to DAFM. The site-specific mitigations identified in the Report and AA Determination Statement were attached as conditions of licence issued for felling and reforestation project LS01-FL0076. Note that the licence was issued on 04/02/2020 on the basis of a draft AA Report and AA Determination Statement. The finalised AA Report and AA Determination Statement is dated 06/02/2020.”*

An oral hearing was held of which all parties were notified and representatives of the DAFM and the Applicant attended. The DAFM presented an overview of their processing of the licence and the screening and appropriate assessment undertaken. They submitted that the proposal lies within Slieve Bloom SPA but inside a “green area”, an area further than 1.2 km from a nesting site and that the protocol agreed with the NPWS regarding Hen Harrier had been adhered to. They submitted that other plans and projects had been considered as described in the appropriate assessment report. It was restated that the licence had been issued on a draft appropriate assessment report and determination

and that the document was finalised on 6<sup>th</sup> February 2020. They submitted that the protocol includes a regular updating of nest sites and that the most recent data came from April 2020. The Applicant's Representatives described the documents and information provided with the application. They submitted that the site had been visited by one of their Environmental Officers who found that the site adjoined a wet area at the northeast which drained into the Ballynacarraig river that drained into the Clonaslee Eskers And Derry Bog SAC and that the hydrological distance was over 6km and that the qualifying interests of the SAC were of a terrestrial nature. They further submitted that the proposal does not involve any deforestation for the purposes of land use change and does comprise a class of project covered by the EU EIA Directive.

In considering the appeal the FAC examined the appropriate assessment undertaken by the DAFM including the initial screening. The proposal is not connected with or necessary to the management of any European site. The FAC examined publicly available information from the EPA and NPWS and identified the same five sites as the DAFM within 15km from the proposal. These are, with direct distances, 412 Slieve Bloom Mountains SAC (2.3km), 571 Charleville Wood SAC (11.7km), 859 Clonaslee Eskers And Derry Bog SAC (1.7km), 2162 River Barrow And River Nore SAC (6.8km), 4160 Slieve Bloom Mountains SPA (within). The FAC is satisfied that there is no requirement to extend this radius in this case given the scale, nature and location of the proposal. The DAFM considered each site in turn and provided the reasons for screening four of the sites out for appropriate assessment, with Slieve Bloom SPA being screened in based on proximity. The DAFM identified this as being a precautionary approach. In addition, referrals were made to the NPWS and the protocol agreed with the NPWS regarding Hen Harrier was employed in the processing of the application. As identified by the DAFM in its statement to the FAC, the licence was issued on a draft appropriate assessment report and determination before it was finalised. The FAC considers and is satisfied that this issue constitutes a serious error in the making of the decision regarding licence LS01-FL0076.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal and submissions received including at the oral hearing. The FAC is satisfied that a serious error was made in making the decision and is setting aside and remitting the decision of the Minister regarding licence LS01-FL0076 in line with Article 14B of the Agricultural Appeals Act 2001, as amended, to undertake an appropriate assessment of the proposal in relation to Slieve Bloom SPA before a new decision is made.

Yours sincerely,

Vincent Upton On Behalf of the Forestry Appeals Committee