



[REDACTED]

26 February 2021

**Subject:** Appeal FAC 042/2020 in relation to licence TFL00262818

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine in respect of Tree Felling Licence approval TFL00262818.

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 the parties to the appeal.

#### **Background**

Tree Felling Licence TFL00262818 was granted by the Department on 17 January, 2020.

#### **Hearing**

A hearing of appeal 042/2020 was conducted by the FAC on 7 December, 2020.

**FAC Members:** Mr. Myles Mac Donncadha (Chairperson), Ms. Claire Kennedy and Mr. James Conway.

#### **Decision**

The Forestry Appeals Committee considered all of the documentation on the file, including application details, processing of the application by DAFM, and the grounds of appeal before deciding to vary the decision to grant this Tree Felling Licence (Reference TFL00262818) with the following changes-

- (i) the removal of all references to plots 7,8,9 and 10 from Schedules 2 and 3 of the licence,
- (ii) the removal of the current condition h(ii) on the licence and replacement with the following condition,  
*h)(ii) no felling operations may take place in plots 7,8,9 and 10 under this licence (as stipulated in the attached Report)*

The proposal is for two thinnings without clearfell in parts of 3 separate blocks (27ha), three thinnings without clearfell in parts of 3 separate blocks (43ha), one or two thinnings and later clearfell in 6 separate blocks (58ha) and clearfell without thinning in 2 separate blocks (18ha). This activity is to take place over a 10 year period and averages 25ha thinning and 7.5ha felling per annum over the 6 non-adjacent blocks, which are located up to 4km distant from each other in the townlands of Knockhall, Ballykilcline, Mullaghmacormick and Lavagh in Co. Roscommon. The current tree species comprise Sitka spruce, Norway spruce, Japanese larch, Ash and Sycamore.

The project area does not fall within any designated Natura 2000 site but is within 15km of a number of terrestrial and transitional sites as follows: Annaghmore Lough SAC (code: 001626) located 8.9km away, Ballykenny-Fishertown Bog SPA (code: 004101) located 4.8km away, Brown Bog SAC (code: 002346) located 11km away, Clooneen Bog SAC (code: 002348) located 3.2km away and Lough Forbes Complex SAC (code: 001818) located 4.8km away from the closest blocks of the project area.

The project area borders a mix of agricultural land, mature forestry and adjoins public roads. The predominant soil type underlining the project area is predominantly podzolic in nature. The slope is mostly flat to moderate (<15%) and the habitat type is exclusively conifer plantation. The project area contains streams and field drain watercourses and is located within the WFD Catchment Upper Shannon (ID 26C) and sub-catchments of Upper Shannon (ID SC\_070 & SC\_040).

DAFM referred the licence to the National Parks & Wildlife Service (NPWS) and their response was received on 3 July 2019. In addition to general observations regarding the duty of care of DAFM with regard to their role as a competent national authority under the Habitats Directive a number of additional comments and requests for additional information are made with regard to the application under review. DAFM Archaeology department were also consulted and recommended that four proposed plots (numbered 7,8,9 and 10 on the application and comprising approx. 30 ha) be refused in their entirety, while the remaining plots be approved with the general archaeological conditions. Roscommon County Council were also referred to for this licence and they responded on a plot-by-plot basis regarding the objectives of the WFD River Basin Management Plan 2018-2021 and relevant waters on site *vis a vis* general harvesting and replanting practice, including drawing attention to the presence of a ring fort on the site.

On 26 November 2019 the Forest Service District Inspector undertook a Stage 1 Screening Assessment in relation to the provisions of the Habitats Directive using the Appropriate Assessment Screening protocol in place at the time. The inspector reviewed the details of all the Natura 2000 sites within 15km of the project, including their qualifying interests and conservation objectives, and supporting habitats and species. An in-combination assessment was also made in tandem with the AA screening. The inspector concluded that the project could be screened out on the basis that the project would not have a significant effect on any designated areas of relevance and Appropriate Assessment was not required.

DAFM issued a licence on 17 January 2020. The standard felling licence conditions regarding adherence to all up-to-date standards and guidelines are imposed along with three additional conditions relating to the protection of archaeological heritage. These are that (h)(i) the archaeology report attached to the licence be strictly adhered to; (h)(ii) no felling operations may take place in plots 7,8,9 and 10 without a full Archaeological assessment (as stipulated in the aforementioned report) and (h)(iii) the requirement to liaise with the Forest Service Archaeologist prior to commencing any felling operations.

There is one appeal against the decision. The grounds relate to the Environmental impact assessment and determination for this project are not consistent with European Law. It contends that the application does not contain sufficient information to be assessed properly with regard to potential impacts on habitats and species as noted by NPWS. It further states a lack of information supplied with the application such as the Harvest Plan not conforming to the (interim) standards for Felling and Reforestation and no Harvest Plan Map provided for the application.

In a statement to the FAC, the DAFM responded to the grounds of appeal stating that the licence application had been processed according to Forest Service Appropriate Assessment Guidelines and Standard Operating Procedures relevant at the time and current (05 November 2019).

The FAC had regard to the record of the decision under appeal and the submitted grounds. 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. The EU 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 (nor clear-felling) are 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 thinning (on between one and three occasions) of an area of 70.7 ha and thinning, felling and replanting of an area of 75.5 ha in six non adjacent blocks. 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.

Regarding the NPWS referral, while formulating its decisions DAFM must have regard to the opinion expressed in all submissions and responses received from statutory consultees. In its assessment of the adequacy of information available to DAFM to assist in its decision making, the FAC notes that a two page harvest plan was furnished by the applicant (although not a requirement at the time) that identified extraction routes, stacking zones and other relevant features and the reforestation plans and objective are stated in Part 4 of the Tree Felling Licence application. The DAFM inspector was equipped with this documentation when they chose to undertake a site inspection prior to decision making. The AA and EIA screening processes that aim to safeguard sensitive habitats and species were also applied by DAFM, who are the delegated authority in this instance. Having regard to this evidence FAC considers that DAFM had sufficient information available to them to make their determination in this case.

While archaeological protection was not raised as a ground of appeal the FAC draws attention to section Schedule 2 of the licence which specifies felling operations are authorised in the land parcels listed in Table 1 and shown in the attached ortho-photographs. Table 1 of Schedule 2 includes the plots 7,8,9 and 10 that are expressly refused a licence according to the attached archaeological report. As clearfelling is proposed in plots 9 and 10 the relevant replanting plan for these plots is also included in Schedule 3 of the licence. The attached archaeological report is very clear in its recommendation for refusal of a licence for plots 7,8, 9 and 10 and states the need for a new licence to be submitted in respect of these plots if the applicant wishes to pursue harvesting these areas. In correspondence on file it is clear that the National Monuments Service concurs with this approach. While the FAC considers the DAFM inspector is in no way advocating unauthorised activity in plots 7,8,9 and 10 the overall effect of schedules 2 and 3, condition (h) and the content of the archaeologists report is one of confusion. For example, it appears that condition (h)(ii) specifies the requirement to liaise with the Forest Service Archaeologist prior to commencing any felling operations whereas plots 7,8, 9 and 10 are recommended by the archaeologist to be refused inclusion and no other plots merit ongoing supervision.

In deciding to vary the licencing decision, on the balance of evidence, the FAC is satisfied that there was a significant error made in including plots 7,8,9 and 10 in Schedule 2 and plots 9 and 10 in Schedule 3 of the felling licence. This is because strict adherence to the archaeological report attached to the licence would require that plots 7, 8, 9 and 10 be refused and made subject of a new licence application. In the view of the FAC, however, this shortcoming does not undermine the integrity of the decision made in respect of plots 1-6 and 11-21. The FAC therefore considers that condition h)(ii) "no felling operations are to take place in plots 7,8,9 and 10 without a full Archaeological assessment (as stipulated in the attached Report)" should be replaced to read "h)(ii) no felling operations may take place in plots 7,8,9 and 10 under this licence (as stipulated in the attached Report)" and all references to plots 7,8,9 and 10 be removed from Schedules 2 and 3 of the licence.

In considering the appeal the FAC had regard to the record of the decision, the submitted grounds of appeal and submissions received. The FAC is satisfied that a serious or significant error was made in making the decision regarding TFL00262818 and that the decision should be varied to include the condition identified.

Yours sincerely



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Mr. Myles Mac Donncadha (on behalf of the FAC)