



16 November 2020

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Our ref: 234/2020

Subject: Appeal in relation to felling licence CE07-FL0204

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine (DAFM) in respect of licence CE07-FL0204.

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

Felling licence CE07-FL0204 was granted by the Department on 01 May 2020.

Hearing

An oral hearing of appeal 234/2020 was conducted by the FAC on 12 November 2020.

Attendees:

FAC: Mr Des Johnson (Chairperson), Mr Luke Sweetman, Ms Bernadette Murphy & Mr Pat Coman
Secretary to the FAC: Ms Ruth Kinehan
Applicant representatives: [REDACTED]
DAFM representatives: Mr Luke Middleton & Ms Jade McManus

Decision

The Forestry Appeals Committee (FAC) considered all of the documentation on the file, including application details, processing of the application by DAFM, the grounds of appeal, submissions made at the Oral Hearing and all other submissions, before deciding to set aside and remit the decision to grant this licence (Reference CE07-FL0204).

The application is for clear-felling and restocking of a stated site area of 6.75ha at Kilcloher, Lispuchaun, Rathcroney, Co. Clare. Felling would be of Sitka Spruce and Lodgepole Pine (S), planted in 1983. Proposed restocking would be 100% Sitka Spruce (6.41ha) with 0.34ha of open space. A

Harvest Plan and Appropriate Assessment Pre-screening Report are submitted with the application. The underlying soils are stated to be 100% Blanket Peats and the slope is stated to be predominantly moderate.

DAFM referred the application to Clare County Council. DAFM confirmed that no response was received.

In processing the application, the DAFM carried out a screening for Appropriate Assessment dated 30th April 2020. This listed 13 Natura 2000 sites (10 SACs and 3 SPAs) within a 15km radius of the project lands. All sites are assessed and it is determined that there is no likelihood of significant effects on any of the designated sites for reasons relating to lack of direct upstream connection and pathway, and separation distances and, in the case of the Lower River Shannon SAC "having considered the expert opinion and the rationale presented in the Pre-screening Report (regarding hydrological distance, project area, soil type and depth, the slope and project separation distance)".

The Licence was issued on 1st May 2020 and is exercisable until 31st December 2022. It is subject to standard conditions with an additional condition imposed for reason of landscape enhancement and protection of water quality.

There is a single appeal against the decision to grant the licence. The grounds contend that there is no in-combination assessment of the replanting. The area replanted by Coillte exceeds 50ha. The decision does not comply with the Habitats and EIA Directives. The FAC, as a quasi-judicial body, must comply with EU law.

In response the DAFM state that the application was subject to the DAFM's AA screening procedures with 15 sites within 15km radius of the project lands being assessed. Information submitted with the application, including the Pre-screening Appropriate Assessment Report, was considered. It concluded that the proposed development, when considered in combination with other plans and projects as identified in the applicants Pre-screening Report, would not give rise to the possibility of a significant effect on any European site. It was also determined, for the purposes of SI 477 of 2011, that the project would not adversely affect the integrity of any screened European site. A number of qualifying interests and conservation objectives were truncated in outputting the screening exercise, but all were considered in the determination by the DAFM.

The applicants submitted a second detailed Pre-screening Report to the DAFM dated 29th April 2020. In terms of in-combination projects, the report lists 6 private felling licences and 4 forest roads within 1.5km of the project lands. In addition, the report refers to 8 internally submitted harvesting applications for 71.55ha and 1 new road application for 174.78m also within 1.5km of the project lands. This report concludes that there is no need to undergo Stage 2 Appropriate Assessment.

The DAFM submitted a further in-combination assessment which it carried out in the week commencing 1st May 2020. Under questioning at the Oral Hearing, the DAFM confirmed that this second assessment was completed after the licence was granted. This listed numerous forestry projects significantly different to the projects listed by the applicants.

The FAC sat in person at an Oral Hearing in Portlaoise on 12th November 2020. The parties were invited to attend in person or by electronic means. The DAFM and the applicants participated electronically but the appellant did not participate. At the Oral Hearing the DAFM clarified that its original screening



in-combination assessment had been based on the information submitted with the application and that its subsequent in-combination assessment had been undertaken after the granting of the licence. This second assessment listed numerous forestry projects, (both Coillte and private). The FAC noted that a significant number of the forestry projects listed appeared to be dated and were unable to determine at the Oral Hearing precisely the current status of a number of the projects. The applicants stated that their Pre-screening Report in-combination assessment had been based on sites within 1.5km and that no sites had been identified likely to give rise to in-combination effects.

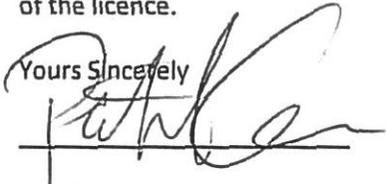
In addressing the grounds of appeal, the FAC noted that the proposed development consists of clear-felling and replanting on a stated site of 10.91ha. and considered the contention that the provisions of the EIA Directive should have been complied with. The EU Directive sets out, in Annex I a list of 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 FAC concludes that the felling and subsequent replanting, as part of a forestry operation, with no change in land use, does not fall within the classes referred to in the Directive, and similarly are not covered in the Irish Regulations (S.I. No. 191 of 2017). There is no evidence before the FAC to indicate that the proposed felling is for the purposes of a change in land use or that the replanting constitutes initial afforestation. As such, the FAC concluded that there is no breach of any of the provisions of the EIA Directive as the proposed development is not of a class of development covered by the Directive.

Under Article 6(3) of the Habitats Directive, any plan or project not directly connected with or necessary to the management of a European site, must be subject to an assessment of the likely significant effects the project may have on such a designated site, either individually or in combination with other plans or projects, having regard to the conservation objectives of that designated site. In this case, the DAFM undertook a Stage 1 screening in relation to 13 Natura 2000 sites and concluded that the proposed project alone would not be likely to have significant effects on any Natura 2000 site. The FAC is satisfied that the procedures adopted by the DAFM in reaching the conclusion that the proposed development alone would not be likely to give rise to significant effects, were correct. The FAC noted that the qualifying interests listed in this assessment were truncated on the DAFM documentation, but considered that this was not a serious or significant error as there was no possibility of any significant effects on the designated sites for the reasons given in the DAFM assessment. However, in respect of its assessment of in-combination effects, the DAFM relied solely on information submitted by the applicant before making its decision. The DAFM subsequently submitted to the FAC, as part of a further in-combination assessment, listings of other plans and projects (which were significantly different from the details submitted by the applicant), including forest roads, afforestation and felling projects. The FAC noted that this assessment was carried out

after the granting of the licence. Having regard to the nature of the site and the surrounding area, and to the nature and number of other forestry projects listed, the FAC is satisfied that the failure of the DAFM to carry out a satisfactory in-combination assessment prior to the granting of the licence constituted a significant error in the making of the decision the subject of the appeal.

In the above circumstances, the FAC concluded that the decision of the DAFM should be set aside and remitted to the Minister to carry out an assessment of the proposed development on Natura 2000 sites, specifically in combination with other plans and projects, before making the decision in respect of the licence.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Pat Coman', written over a horizontal line.

Pat Coman, on behalf of the FAC