



An Coiste um Achomhairc
Foraoiseachta

Forestry Appeals Committee

23 October 2020

[REDACTED]

Our ref: FAC 476/2019

Subject: Appeal in relation to felling licence TFL00369419

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 felling licence TFL00369419.

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 TFL00369419 was granted by the Department on 19 December 2019.

Hearing

A hearing of appeal 476/19 was conducted by the FAC on 08 October 2020.

FAC Members: Mr Des Johnson (Chairperson), Mr Vincent Upton, Mr Pat Coman and Ms Bernadette Murphy

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, before deciding to affirm the decision in respect of this licence.

The license pertains to 1st and 2nd thinning in 2020 and 2024 of a stated 5.9ha in one Plot containing Sitka Spruce at Lustia, Co. Roscommon. The proposal is located c1.3km East of Leitrim village. The proposal is separated to the North from another medium sized forestry by a strip of wet agricultural land. An unplanted biplot is located to

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the West. Wet agricultural land also adjoins to the East and further West. The project is adjacent to the public road to the South. There is a river/ stream rising to the North West that flows South and then East through the adjoining biplot at the South West corner. This watercourse runs adjacent to the Southern boundary to join the South flowing Shannon at a short distance (c780m). Drains are likely present in the project with the fall to the South. There are houses along public road in the area but at a remove. A Harvest Plan was submitted with the application.

The proposal was referred to an Archaeologist. Conditions were subsequently recommended in respect of the historic farmyard located on the site. Adherence to *Forestry and Archaeology* and *Forest Harvesting and the Environment Guidelines* was specified. The report states that great care is to be taken to avoid impacting any upstanding historic fabric (e.g. stone walls) during the works, access and egress. The relevant area is demarcated on an accompanying map. Previously unrecorded archaeological sites or artefacts discovered during the course of the proposed are to be left undisturbed, reported to the relevant authorities immediately and a minimum exclusion zone of 20m applied but preferably of 100m or more.

DAFM issued a licence on 19 December 2019 subject to standard conditions. In addition, *Standards for Felling and Reforestation 2019* apply. A specific archaeological condition relating to avoidance of impact on any upstanding historic fabric as described above is provided for. The *Archaeology Report* and accompany map are also to be referred to.

There is one appeal against the decision. The grounds relate to the *Appropriate Assessment* screening undertaken by the DAFM and suggest that an *Appropriate Assessment* should have been undertaken. It is indicated that the Forest Service identified that there were Natura 2000 sites within 15km. It is suggested that the inspector did not show evidence on which responses that they provided in the screening were based and that in this case an *Appropriate Assessment* was legally required. The appellant referred to part of the judgement on Case C-323/17 and quotes that it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site. It is stated in the appellant's submission that safeguards published in the Forest Service guidelines, requirements & procedures are in fact measures intended to avoid or reduce the harmful effects of the plan or project on that site. The appellant refers to required compliance with Commission notice "*Managing Natura 2000 Sites - The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC*" - Brussels, 21.11.2018 C(2018) 7621 final https://ec.europa.eu/environment/nature/natura2000/management/docs/art6/Provisions_Art_6_nov_2018_en.pdf. The appellant cites paragraph 26 of the judgement Kelly -v- An Bord Pleanála & others 2013 802 JR 25/07/2014 which sets out that there is no need to establish an effect rather that there merely may be an effect.

The DAFM responded to the grounds of appeal stating that the *Appropriate Assessment* screening procedure relevant at the time was applied. DAFM indicate that the closest Natura site is located 11.9 km from the proposal. DAFM specify that there is no hydrological connection to this Natura site and therefore there can and will be no impact from this proposal. DAFM state that the proposal would be screened out using the Habitat Table 18_Dec_19 and the Bird Foraging table 06_Jan_20 and that an *In Combination Assessment* was carried out. All relevant information is declared to be on file.

In processing the application DAFM undertook a Stage 1 screening assessment in relation to the provisions of the Habitats Directive. Three Natura 2000 sites were identified, along with their qualifying interests and each was assessed to determine if the proposed development alone, or in-combination would give rise to the likelihood of significant effects. The sites identified were *Cuilcagh - Anierin Uplands SAC 00584 (c11.9km)*, *Lough Arrow SAC 001673 (c13.6km)* and *Lough Arrow SPA 004050 (c13.7km)*. DAFM concluded that there is no likelihood of significant effects on *Cuilcagh - Anierin Uplands SAC* or *Lough Arrow SAC* by reason of the projects location downstream of the designated sites and subsequent lack of any hydrological connection. The former project was



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also screened out due to the separation distance from the project (c11.9km). *Lough Arrow SPA* was also screened out owing to the unsuitability of the project area for use by any of the wetland bird species listed as *Qualifying Interests* of the SPA. The FAC considered that it had adequate information in respect of the characteristics of the proposal, the location, and types and characteristics of potential impacts in order to determine if the proposed development, alone or cumulatively with other plans and projects, would be likely to have significant effects on the environment. The procedures adopted by the DAFM in their assessment are considered acceptable. The FAC concurs with the conclusion that there is no likelihood of significant effects on any Natura 2000 site arising from the proposed forest thinning.

Having regard to the nature and scale of the proposal, the characteristics of the surrounding area and other plans and projects, including forestry projects listed by DAFM (Afforestation & Forest Roads – 7 & Felling - 6), the FAC concludes that there is no likelihood of significant effects on any Natura 2000 site arising from the proposed development in-combination with other plans and projects in the area.

The FAC is satisfied that even though standard guidelines apply and there are additional conditions on the licence, none of these are in mitigation of any likely significant effects on European sites as none exist in this instance.

The EIA Directive 2011/92/EU, as amended by 2014/52/EU, 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 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 FAC considered the impact of the proposal on the environment, including on *Lough Drumharlow proposed NHA (O1643)* located c3.8km downstream from the project and on the River Shannon (c780m). The FAC notes the hydrological connection to the proposal. The FAC concluded that the proposal will not impact either significantly, owing to the nature (thinning) and small scale of the proposal and the nature of the species and habitats concerned. The FAC has also noted the local surroundings and the proximity to Leitrim village. The FAC acknowledges there will be some disturbance when works are in progress but these, by their nature, will be temporary, short term and are the normal activities that are carried out under licence in a managed forest which are not out of keeping with other management practices in the area. The FAC noted that the licensee conditions require adherence for felling operations to a series of requirements and guidelines published by the DAFM; Forestry and Water Quality, Forest Biodiversity, Forest Harvesting and the Environment, Forestry and Archaeology, Forestry and the Landscape and Forestry, Aerial Fertilisation guidelines, Code of Best Forest Practice - Ireland and The Irish National Forest Standard. An archaeological report was prepared before the licensing of the proposal and archaeological conditions are attached to the licence in respect of the historic farmyard located on the site. The FAC is satisfied that these are appropriate and acceptable. In conclusion the FAC does not consider that

this thinning proposal would result in any real likelihood of a significant effect on the environment given the nature and small scale of the proposal.

In deciding to affirm the licence decision, on the balance of evidence, the FAC is satisfied that there was no serious or significant error or series of errors made in making the decision or that the decision was made without complying with fair procedures. The FAC concluded that the proposed development would be consistent with Government policy and Good Forestry Practice.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "Bernadette Murphy".

Bernadette Murphy on behalf of the Forestry Appeals Committee