



[REDACTED]

8th April 2021

Subject: Appeal FAC 054/2020 regarding licence TFL00395619

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 TFL00395619 for the felling of trees on a site of 3.79 ha at Runnamoat, Ballydooley, Co. Roscommon was approved by the Department of Agriculture, Food and the Marine (DAFM) on the 21st of January 2020. An oral hearing of the above appeal was held by the FAC on the 9th of March 2021.

The following attended Oral Hearing:

FAC Members: Mr. Des Johnson (Chairperson), Mr. John Evans, Mr. Luke Sweetman, and Mr. Dan Molloy.
Administrative Secretary: Mr. Michael Ryan
Applicant Representatives: Not Present
DAFM Representatives: Ms. Eilish Kehoe & Mr. Momme Reibisch
Appellant: Not Present

Decision

Having regard to the evidence before it, including the record of the decision by the DAFM, the notices of appeal, and, in particular, the following considerations, the FAC has decided to affirm the decision of the Minister regarding licence TFL00395619.

The project site is described as comprising 3.79 ha of thinning, the soil type underlying the project area is predominantly highly modified peat & peaty podzols in nature, the slope is predominantly flat to moderate (<15%), the project area does not adjoin or contain an aquatic zone(s), and the vegetation type(s) within the project area comprise conifer plantation.

The licence application is dated the 11th August 2019 and indicates that the current stock on the site is Norway Spruce. On file is record of a request from the Forestry Inspector to the applicant that a harvest plan be submitted and that the plan must conform with the Forest service Standards for Felling and Reforestation. The submitted harvest plan is on file, dated the 9th of December 2019, and it notes, amongst other things, the need to retain hedgerows, old trees, harvesting to take place in dry weather only, brash to be placed along extraction path, harvest debris to be removed from drains, thinning to be selective at approx. 30% of standing trees. The harvest plan includes a map showing an extraction route and a field drain bounding the south of the site (running in a NW to SE direction).

An Appropriate Assessment Screening (AAS) form, completed by a Forestry Inspector on the 9th of September 2019, is on file. This uses a 3Km spatial search area for Natura sites and screens all sites out on that basis. An Inspector's Report is also on file which includes a further AAS using a 15Km spatial search area and noting searches of various planning systems on the 6th of January 2020 as part of assessment of in-combination effects. There is an in-combination report on file showing searches carried out on the 7th of January 2020.

The AAS in the Inspector's Report notes 12 Natura sites. The following sites are screened out because of the absence of any significant relevant watercourse(s) within or adjoining the project area: Mullygollan Turlough SAC [0612], Corliskea/Trien/Cloonfelliv Bog SAC [2110], Kilsallagh Bog SAC [0285], Ballinturly Turlough SAC [0588], Lisnageeragh Bog and Ballinastack Turlough SAC [0296], Corbo Bog SAC [2349], Bellanagare Bog SAC [0592], Lough Ree SAC [0440], Annaghmore Lough (Roscommon) SAC [1626], and Aughtim (Aghrane) Bog SAC [2200].

Three sites are screened out because of the unsuitability of the project area for use by any species listed as a qualifying interest of the Natura site: Bellanagare Bog SAC [0592], Annaghmore Lough (Roscommon) SAC [1626], and River Suck Callows SPA [4097].

The River Suck Callows SPA [4097] is also screened out due to the distance between the project site and the Natura 2000 site. The Bellanagare Bog SPA [4105] is screened out because the Special Conservation Interest for the site, Greenland White-fronted Goose, have been shown to have abandoned the site.

The decision by the Minister to grant the licence is the subject of one appeal. In summary, the grounds are: that the Appropriate Assessment screening does not comply with the requirements of the law; that it is merely necessary to determine that there may be a significant effect to trigger Appropriate Assessment (*Kelly v An Bord Pleanála*); that where a waterbody is concerned, that it is necessary to examine the catchment map and state which catchment the proposed development is in; that where there is a turlough, it is necessary to show evidence that there is no groundwater connectivity; that it is not appropriate at screening stage to take account of measures intended to avoid or reduce the harmful effects on a European site; that the likely effects of all aspects of the operation must be considered in combination with other forestry management activities completed, commenced, permitted or

proposed. The appellant also points out certain legal obligations that apply to the FAC where it undertakes a *de novo* assessment of the application.

In advance of the Oral Hearing, the DAFM provided a statement to the FAC. This notes that the application was desk assessed, and that one submission was received from a member of the public. It also asserts: that the Department is satisfied that all criteria as outlined in the following standards and procedures have been adhered to in making a decision on the application; that the AA screening procedure relevant at the time was applied; that the absence of any significant relevant watercourse(s) within or adjoining the project area means there can and will be no impact on any Natura sites; that the proposal would be screened out using the Habitat Table version "18Dec19" and the Bird Foraging Table version "06Jan20"; that an in combination assessment was carried out; and that all relevant information can be found on the departmental file.

At the Oral Hearing the Inspector confirmed that certification took place following screening, and submitted that the soil type was made up of peaty soils and podzols, and that based on prior knowledge of the site, he could confirm that the direction of flow in a field drain noted in the application is slight and to the south east, and is separated from the project site by a pre-existing agricultural road.

In addressing the grounds of appeal, the FAC had regard for the grounds themselves, contributions at the oral hearing, the Statement of Fact provided by the DAFM, and the record of the application and licensing process. The FAC also consulted with several publicly available information sources such as mapping from the Environmental Protection Agency (EPA), the DAFM and the Ordnance Survey Ireland (OSI).

EPA mapping shows a number of streams to the north, west and south of the site. These are all part of the Smaghraan_020 waterbody, which had an Ecological Status of 'Poor' in the 2013-2018 Water Framework Directive (WFD) Monitoring cycle and a WFD Risk status of 'Not at Risk'. The sub-catchment can be seen in EPA mapping to be the 26D_7Suck_SC_030 and the Catchment is the 26D_Upper Shannon. The nearest of these EPA mapped streams is about 300m to the north east. The drain noted in the application is not visible on the EPA mapping, but is visible on mapping from the OSI to be potentially connected to the Smaghraan_020 at a distance of ca. 1.5km. Various aerial imagery and mapping shows there to be a small roadway/lane following this line on the southern edge of the site, and historic mapping indicates the watercourse is likely a roadside drain on the other side of this road to the site.

EPA mapping shows the site is not in an SPA or SAC, and confirms the same Natura sites within 15km as listed above. The nearest SAC is Mullygollan Turlough SAC [0612] at ca 7.8 km. The nearest SPA is the river Suck Callows SPA [4097] at ca. 8.8km. The nearest site hydrologically is the River Suck Callows SPA [4097] at ca. 19km.

In addressing the Appropriate Assessment grounds of appeal, the FAC considered, 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 and projects, having regard to the conservation objectives of that designated site. In this case, the DAFM undertook a Stage 1 screening, and found 12 European sites within 15 km of the proposal area, and that there was no reason to extend the zone of influence in this case. The FAC consulted publicly available information from the National Parks and Wildlife Service and EPA and identified the same 12 sites. In doing so, the FAC was readily able to identify and confirm relevant waterbodies and related information from publicly available information. The DAFM considered each site in turn and listed the associated qualifying interests and conservation objectives and the reasons for their screening conclusions. The DAFM's reasons for screening out the different sites were site-specific and are summarised above. The DAFM also undertook and recorded a consideration of other plans and projects, including forestry and non-forestry projects, and concluded that the project, when considered in combination with other plans and projects, will not give rise to the possibility of a significant effect on any Natura site. The FAC considered all of the evidence before it and is not satisfied that the DAFM erred in their decision to screen out the 12 Natura sites for Appropriate Assessment. Furthermore, the FAC is not satisfied that a serious or significant error or series of errors were made in the making of the decision regarding Appropriate Assessment.

The FAC considered the ground of appeal that in the case of the Turlough, it is necessary to show evidence that there is no groundwater connectivity. No specific Turlough is mentioned by the appellant, however the FAC considered that the project site is in a separate sub catchment to any Turlough related Natura site. The FAC is not satisfied that a serious or significant error or series of errors were made in the making of the decision in this regard.

In considering the appeal the FAC had regard to the record of the decision, the submitted grounds of appeal and submissions received including at the oral hearing. The FAC is not satisfied that a serious or significant error or a series of errors was made in making the decision or that the decision was made without complying with fair procedure. The FAC, in deciding to affirm the decision, considered that the proposed development would be consistent with Government policy and Good Forestry Practice.

Yours sincerely,

A large black rectangular redaction box covering the signature of John Evans.

John Evans, On Behalf of the Forestry Appeals Committee