



15 April 2021

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

FAC ref: 097/2020

Subject: Appeal in relation to felling licence TFL00371819

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 felling licence TFL00371819.

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 TFL00371819 was granted by the Department on 21 February 2020.

Hearing

An oral hearing of appeal 097/2020 was conducted by the FAC on 30 March 2021.

Attendees:

FAC Members: Mr Des Johnson (Chairperson), Mr Luke Sweetman and Mr Pat Coman
Secretary to the FAC: Mr Michael Ryan
Applicant: [REDACTED]
DAFM representatives: Mr Martin Regan & Ms Eilish Kehoe

Decision

The FAC considered all of the documentation on the file, including application details, processing of the application by the DAFM, the grounds of appeal, and all submissions/observations, before deciding to set aside and remit the decision in respect of this licence (Reference TFL 00371819).

The proposal is for felling (thinning in 3 phases) on a stated site area of 1.96ha at Colgagh, Calry, Co. Sligo. The trees to be thinned are stated to be Douglas Fir, but it was clarified at the Oral Hearing that they are Noble Fir.

The Inspector's certification notes the thinning years are 2020, 2023 & 2027. The area is sensitive to fisheries and the site is in a High Amenity Area or Prime Scenic Area in the County Development Plan. It contains or adjoins an archaeological site or feature. Natura 2000 sites within a 15km radius were screened for Appropriate Assessment. The following sites were identified and screened out for Stage 2 Appropriate Assessment - Arroo Mountains SAC, Ballintemple and Ballygiligan SPA, Ballysadare Bay SAC, Ballysadare Bay SPA, Ben Bulbin, Cleniff and Glenade Complex SAC, Cummeen Strand SPA, Cummeen Strand/Drumcliff Bay (Sligo Bay) SAC, Drumcliff Bay SPA, Glenade Lough SAC, Lough Gill SAC, Sligo/Leitrim Uplands SPA, Union Wood SAC and the Unshin River SAC. The reasons for the screening conclusions were that the project area is downstream from Natura sites with no hydrological connection, absence of aquatic zone within or adjoining the project area, absence of any significant relevant watercourses within or adjoining the site, and absence of any aquatic zone within or adjoining the project area, and absence of significant watercourse. In-combination projects considered are non-forestry – dwellings and domestic extensions, and forestry related (since 2015) – afforestation (18), forest roads (1), felling (8), Coillte felling (23).

The licence was issued on 21.02.2020 and is subject to standard conditions.

There is a single appeal against the decision to grant the licence. The grounds of appeal contend that the Appropriate Assessment screening does not comply with the requirements of the law. There is no need to establish a significant effect to trigger Appropriate Assessment - it is merely necessary to determine that there may be a significant effect (*Kelly v An Bord Pleanála*). The Appropriate Assessment screening shows that there may be such an effect. Cumulative effects have not been assessed. The FAC, as a public authority, is required to carry out screening for Appropriate Assessment. The FAC must make available records of assessments undertaken to the appellant. Where a waterbody is concerned, it is necessary to examine the catchment map and state which catchment the proposed development is in. Where there is a turlough, it is necessary to show evidence that there is no groundwater connectivity. The FAC must comply fully with NPWS requirements. It is not appropriate at screening stage to take account of measures intended to avoid or reduce the harmful effects on a European site.

In response, the DAFM state that the application was field and desk assessed and submissions were reviewed. All criteria were fully adhered to and approval is in order.

An Oral Hearing was held on 30.03.2021 and all parties were invited to attend. The FAC sat remotely. The applicant and the DAFM participated remotely. The appellant was not in attendance. The DAFM detailed the procedures followed leading to the decision to grant the licence. A site inspection took place on 21.02.2020. An in-combination report was received 5 days after the issuing of the licence. The site area referred to in the licence reflects what was applied for – Plots 1, 2 and 3 come to 1.96ha. The applicant read a statement to the Oral Hearing, stating that there were two errors in the Inspector's Certification report, and the applicant noted that the site was field and desk assessed and the tree species is Noble Fir and not Douglas Fir. The background to the planting of trees was outlined as originally being for Christmas trees interspersed with Ash. The original planting was mismanaged by a forestry company, which went bust. A significant number of trees did not survive and the rest are not of interest to harvesters. Plot 1 is densely planted with trees now 25-30 feet high. The applicant wants to develop a nature trail through the forest down to the nearby lake as a biodiversity resource for local schools and interest groups. A Landscape Gardener was engaged and recommended thinning.



To compensate for the removal of trees the applicant agreed to plant native birch trees in Plot 3. The removal of the trees is not for any financial gain as the trees have no commercial value. Under questioning by the FAC, the applicant stated that originally 10000 trees were planted on her lands but only about 6000 survived. If the licence was to be confirmed, she would have no problem with a condition limiting it to Plot 1, which is approximately 1.4ha. DAFM confirmed that Plot 1 is a perfectly dry site and there were no issues with water. In conclusion, the applicant stated that the proposal was for area improvement and the DAFM described the project as laudable and with great potential for the area.

The FAC considered the procedures followed by the DAFM in its screening of the project for Appropriate Assessment. The FAC noted that there is no relevant watercourse on the project lands, that this is a dry site and that the proposal is for thinning in three phases. The FAC noted the reasoning given for the DAFM conclusion that the proposed development would not be likely to have a significant effect on any Natura 2000 site, individually. The FAC considered that there is no convincing evidence before it to indicate that the DAFM took account of mitigation measures in its screening exercise. The FAC noted that the conclusion of the screening for Appropriate Assessment did not consider the potential for in-combination effects and that the decision to grant the licence was made without consideration of in-combination effects contrary to the requirements of Article 6(3) of the Habitats Directive. The in-combination report dated 5 days after the granting of the licence lists the following forestry related projects – afforestation (18), felling (8), Roads (1) and Coillte felling (23). While noting that this clearly relates to a wider area separated from the project lands, the FAC concluded that a significant error was made in making the decision to grant the licence by not considering in-combination effects before coming to a screening conclusion and deciding to grant the licence.

The project lands are in the Sligo Bay & Drowse Catchment and the Bonet_SC_030 sub-catchment. Having regard to the nature and scale of the proposal, and to the absence of aquatic zones on the site, the FAC concluded that the proposed development, individually, would not have any adverse impact on water quality.

The FAC concluded that a significant error was made in the making of the decision to grant the licence as the screening for Appropriate Assessment failed to consider the potential for in-combination effects arising and, in these circumstances, decided to set aside and remit the matter to the Minister to carry out an in-combination assessment before making a new decision in respect of the proposed development.

Yours Sincerely

Pat Coman, on behalf of the FAC

