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26th April 2021

Subject: Appeal FAC062/2020 in relation to felling licence TFL00340119

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

Felling licence TFL00340119 was issued by the Department of Agriculture, Food and the Marine (DAFM) on the 23rd January 2020.

Hearing

An Oral Hearing of appeals FAC062/2020 was held by the FAC on the 23rd March 2021.

Oral Hearing Participants:

FAC: Mr Des Johnson (Chairperson), Mr Donal Maguire & Mr Luke Sweetman
Secretary to the FAC: Mr Michael Ryan
Applicants: [REDACTED]
DAFM representatives: Ms Eilish Kehoe, Mr Robert Windle

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, submissions made at the Oral Hearing and all other submissions, before deciding to affirm the decision to grant felling licence TFL00340119.

This licence is for the felling and replanting of 8.41ha across two plots in Moneenroe, Co. Kilkenny. The restock species are Sitka spruce (90%) and Additional Broadleaves (10%) for both plots. The underlying soils are predominately Brown earths and the slope is flat to moderate (<15%). The project area does not adjoin or contain an aquatic zone. There are no watercourses within the application site which is located in the Nore Catchment, the Dinin [North] SC 010 Sub-Catchment, and the Dinin (North) 040 River Sub-Basin.

The applicant submitted a felling licence application with associated maps. In completing a desk-assessment of the licence application, the DAFM carried out a Stage 1 Appropriate Assessment (AA) screening that considered three Natura 2000 sites within 15km of the proposal. These were the River Barrow and River Nore SAC, Lisbigney Bog SAC, and the River Nore SPA. All of these sites were screened out for Stage 2 AA "due to the unsuitability of the project area for use by any species listed as a

qualifying interest of the Natura site.” The DAFM consulted various planning websites and along with internal records in completing an assessment of the potential for the proposed development to contribute to a cumulative impact on Natura 2000 sites in the proposal’s Townland (Moneenroe). The DAFM deemed that this project, when considered in combination with other forestry and non-forestry plans and projects, “will not give rise to the possibility of a significant effect on any Natura site.”

The DAFM referred the application to the National Parks and Wildlife Service (NPWS) and the Kilkenny County Council. The County Council did not respond and the NPWS responded on the 1st July 2019 stating they had no comment on the proposed development and attached an appendix of more general points of relevance. The licence issued on the 23rd January 2020 and is subject to relatively standard conditions (a) to (g) plus (h) i) strictly adhere to the Standards for Felling and Reforestation (DAFM, 2019). These standards replace existing Forest Harvesting and the Environment Guidelines (2000). ii) Forest Service personnel to be notified by the applicant/contractor at least two weeks in advance of the clearfell commencement date.

There is one appeal against the licence. The written grounds of appeal were considered in full by the FAC, the following is a summary of the issues raised:

- The Appropriate Assessment screening does not comply with the requirements of the law
- The FAC must carry out a de novo screening and, where necessary, an Appropriate Assessment
- It is merely necessary to determine that there may be a significant effect to trigger Appropriate Assessment (Kelly v An Bord Pleanála)
- The FAC must make available records of assessments undertaken to the appellant. The FAC must make relevant records available 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.
- It is not appropriate at screening stage to take account of measures intended to avoid or reduce the harmful effects on a European site.
- The requirements of the NPWS must be fully complied with.
- The NPWS state that likely effects of all aspects of the operation must be considered in combination with other forestry management activities completed, commenced, permitted or proposed.

The DAFM submitted a response to the grounds of appeal in a written statement to the FAC:

“The relevant AA procedure was applied in approving this licence. The screening information can be found on file. An in-combination assessment was also carried out for this application and can also be found on file. Using the current AA procedure in conjunction with the Habitat & Foraging guidance tables all Natura 2000 sites have been screened out as outlined on file. This application alone or in-combination with other forest and non-forest plans/projects in the area will not have a significant impact on the qualifying interests of the Natura 200 sites, screened as part of the AA.”

The FAC held an Oral Hearing on the 23rd March 2021. The FAC sat remotely, the appellant did not participate, and the applicant and the DAFM participated remotely. The DAFM detailed their process in considering and subsequently approving the application. The applicant declined the opportunity to make a statement. The FAC queried the reason for licence condition (h)(ii) which requires the Licensee/Contractor to notify the DAFM Forestry Inspector two weeks in advance of the clearfell

commencement date. The DAFM stated this was to facilitate field inspection of the operations if deemed necessary. In response to FAC questions, the DAFM explained that, due to a lower level of accuracy, the area applied for (8.41ha) differs from the digitised area (8.51ha) and that the licence is applicable to the extent of the digitised area. The DAFM confirmed the application was certified by the Forestry Inspector on the 13th January 2020. The FAC queried the DAFM's reasons for screening out the River Barrow and River Nore SAC and questioned had the potential for hydrological connectivity between the proposal and this Natura site been assessed. The DAFM stated that this had been considered using the hydrology layer on iFORIS and consulting the Ordnance Survey raster maps for any streams, drains or ditches on site with none found. The DAFM Forestry Inspector stated that he knows the ground in this area well and that the area in general is quite dry and that he was satisfied no hydrological connection exists. The FAC noted the application was not accompanied by a Harvest Plan and queried if this application pre-dated the introduction of the current Interim Standards for Felling and Reforestation (October, 2019). The DAFM confirmed that it did. In response to FAC questions, the DAFM stated there are no Turloughs in the area around the project lands and no groundwater connection to the River Barrow and River Nore SAC.

The FAC gave consideration to the grounds of appeal and had regard, in the first instance, to the submission that the AA screening does not comply with the requirements of the law. The FAC observed that the DAFM completed an AA screening of three Natura 2000 sites within 15km of the proposal and that each was screened out for Stage 2 AA due to the unsuitability of the project area for use by any species listed as a qualifying interest of the Natura site. Having regard to the aquatic Qualifying Interests of the River Barrow and River Nore SAC and the proximity of the proposal to this Natura site, the FAC queried the DAFM at the Oral Hearing regarding their assessment of potential hydrological connectivity between the two. The DAFM clarified that, based on a desk assessment of the relevant remote sensing information and mapping layers supplemented by the Inspector's local knowledge, they had concluded that no hydrological connection exists between the proposal and the River Barrow and River Nore SAC and therefore the site was screened out for AA. The DAFM also completed an in-combination assessment of the potential for the proposed development to contribute to a cumulative impact on Natura sites in-combination with other plans and projects before concluding that there would be no possibility for the proposal to contribute to such an effect. Based on the information before it, the FAC considered that the DAFM's AA screening process was in line with the requirements of the Habitats Directive and found that there is no convincing evidence that the DAFM made a serious or significant error, or series of errors in completing their AA screening and arriving at the conclusions reached. Regarding the appellant's submission 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; the FAC found that, in the circumstances of this case, there is no evidence to suggest that the DAFM had done so in this instance. The FAC had regard to the appellant's submission regarding Turloughs and concluded that there is no evidence to suggest there are Turloughs in the vicinity of the project lands or that there is groundwater connectivity between the proposal and any Turlough. The appellant made a number of submissions regarding the FAC which are not grounds of appeal relating to the decision of the Minister to grant felling licence TFL00340119.

In the circumstances outlined above, and based on the information before it, the FAC concluded that the DAFM did not make a serious or significant error, or series of errors, in their decision to issue TFL00340119 and did so in compliance with fair procedures. In deciding to affirm the decision of the Minister, the FAC considered that the proposed development is in line with Government policy and good forest practice.

Yours sincerely,

A black rectangular redaction box covering the signature of the sender.

Luke Sweetman on Behalf of the Forestry Appeals Committee