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10. February. 2021

Subject: Appeal FAC 586/2020 regarding licence no WW07-FL0153

Dear Sir or Madam

I refer to the appeal to the Forestry Appeals Committee (FAC) against the decision by the Minister for Agriculture, Food and Marine (DAFM) in respect of licence WW07-FL0153

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 WW07-FL0153 was granted by the Department on 17.07.2020

An oral hearing of appeal FAC 586/2020 was conducted by the FAC on 05.02.2021.

Attendees:

FAC: Mr Donal Maguire (Chairperson), Mr Vincent Upton & Mr Derek Daly

Secretary to the FAC: Ms Marie Dobbin

Applicant representatives: [REDACTED]

DAFM representatives: Ms Eilish Kehoe and Mr Anthony Dunbar

Notification and details were issued to the appellant, but the appellant did not attend the oral hearing

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 that the decision of DAFM should be varied and condition J of the licence replaced with a substitute condition as set out below (Reference WW07-FL0153).

This project lies in a rural landscape in Kirikee, Co. Wicklow in the River Sub Basin Avonbeg_030. The River Sub Basin Avonbeg_030 has approximately 36% forest cover which is higher than the national average of 11%. The forest is comprised of Sitka spruce planted in 1978 and would be replanted with Sitka spruce and rowan. At 6.4 hectares the project is considered small in scale. The underlying soil type is described as being Peaty Gleys (approx. 8%) & Podzols (Peaty), Lithosols, Peats (approx. 92%) The slope is predominantly steep 15-30%. The habitat is predominantly WD4. The application is for the felling and replanting of 6.40 ha. The application was subjected to the DAFM's AA Screening procedure, based on a desk assessment, as set out in the document entitled *Appropriate Assessment Procedure: Guidance Note & iFORIS SOP for DAFM Forestry Inspectors (v.05Nov19) (DAFM, 2019)*. The AA screening report and determination completed by the inspector and reviewed by an expert ecologist is included on the file.

The application was referred to Wicklow Co Council on the 9th January 2020 and to IFI on the 18th December 2019. Wicklow Co Council responded on the 6th February 2020, and did not raise any issues of significance. There is no record of IFI the having responded.

The licence issued on 17.07.20 and is subject to standard conditions plus extra conditions stated to be in the interest of protecting the Special Conservation Interest of the Wicklow Mountains SPA 004040 as per the DAFM's Appropriate Assessment determination for WW07-FL0153.

There is one appeal against the decision to grant the licence. *Inter-alia* the grounds contend that the DAFM AA screening did not comply with certain judgements of the High Court, that NPWS 'terms' had not been fully complied with, together with some other points of law.

In a statement to the FAC, the DAFM submitted that Appropriate Assessment (AA) screening was carried out by DAFM for European sites within 15 km of the project. The AA Screening report was completed by the DAFM Inspector and contains recommendations regarding screened European Sites. All QIs/SCIs were also considered during the screening exercise.

The following European sites, Wicklow Mountains SAC, Vale of Clara (Rathdrum Wood) and Deputy's Pass Nature Reserve SAC were screened out due to the absence of a direct upstream hydrological connection, and subsequent lack of any pathway, hydrological or otherwise. The Slaney River Valley SAC was screened out due to the location of the project area being within a separate water body catchment to that containing the Natura site, with no upstream connection, and the subsequent lack of any hydrological pathway.

The potential for project WW07-FL0153 to result in impacts on the Special Conservation Interests and Conservation Objectives of the Wicklow Mountains SPA 004040 was identified on a precautionary basis and the project was taken to Appropriate Assessment stage. Merlin and Peregrine were identified as QI's of the Wicklow Mountains SPA, which might be affected and special conditions were to be attached to the licence to mitigate against any adverse impacts. The basis for this AA determination was that the present habitat of the site in question is not suitable foraging for either Peregrine or Merlin and that breeding could be protected through imposing restrictions on the timing of forestry operations from 1st March to 31st of August and that some positive impacts on the QI's could be expected from imposing a licence condition for the planting of Rowan and broadleaves which would provide both nesting opportunities and habitat for prey species of Merlin and prey species habitat for Peregrine.

The FAC held an oral hearing of the appeal on the 5th of February 2021. The DAFM participated electronically as did representatives of the applicant, the appellant was not represented.


The DAFM submitted its view that the proposed project did not constitute an activity covered by the EIA Directive. The DAFM further contended that the project design, together with adherence to the relevant Environmental Management Framework and to the site-specific mitigation measures set out in the licence, would ensure that potential residual impacts would not arise and that the project will not prevent or obstruct the Qualifying Interests/ Special Conservation Interests of the relevant European sites. The Applicant described the application details and the proposed activities. It was submitted that an Environmental Manager had visited the site and found the forest to be dry and on a mineral soil.

Addressing the grounds of appeal, the FAC noted that the DAFM had carried out a Stage 1 screening assessment for Appropriate Assessment on four Natura sites and had screened out three European sites and subjected the fourth to a stage 2 AA. The Avonbeg River lies to the south of the proposal which flows southeasterly to join the Avoca and enters the sea at Arklow and the proposed felling is not hydrologically connected to any European site. The FAC concluded that that this approach was correct and that there was no possibility of the proposed development, on its own, giving rise to the likelihood

of significant effects on any of the Natura 2000 sites screened out. The FAC noted the procedures adopted by the DAFM in its screening, listing the qualifying interests and conservation interests for each site and assessing the project design, location of the project and possible pathways to the listed designated sites. It was also noted that the assessment had been the subject of a review by an ecologist. The forest stand itself lies some 2.8km outside of the SPA. The FAC considers that 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 EU EIA Directive, and is similarly not covered by the Irish Forestry Regulations (S.I. 191 of 2017). The FAC does not consider that the proposal falls within the classes included in the Annexes of the EIA Directive or considered for EIA in Irish Regulations. The NPWS were not consulted and the appellant did not specify which particular NPWS 'terms' the grounds refer to. The FAC could not determine any error on DAFM's part in this regard.

The FAC noted that the DAFM had inserted certain wording in condition J of the licence, which did not properly capture the determination of the AA screening, and given the physical nature of the site of project WW07-FL0153 were not certain, beyond all reasonable doubt, to achieve the desired objectives. The FAC considered the error to be of a clerical but serious nature. Accordingly, the FAC have decided to vary the conditions of licence WW07-FL0153 to reflect the mitigation measures specified in the Appropriate Assessment Determination and to insert a substitute condition J which shall read "No Felling or other associated forestry operations are permitted within 1st March to 31st August inclusive within 100m of the forest edge. Reason: In the interest of protecting the Special Conservation Interest of the Wicklow Mountains SPA 004040 as per the DAFM's Appropriate Assessment Determination for WW07-FL0153."

Yours Sincerely

A redacted signature consisting of three horizontal black bars covering the name and any handwritten notes.

Donal Maguire on behalf of the Forestry Appeals Committee