



[REDACTED]

31 December 2020

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 Tree Felling Licence approval TFL00253518.

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

Tree Felling Licence TFL00253518 was granted by the Department on 30 August, 2019.

Hearing

A hearing of appeal 234/2019 was conducted by the FAC on 9 November, 2020.

FAC Members: Mr. Myles Mac Donncadha (Chairperson), Ms. Claire Kennedy and Ms. Bernadette Murphy.

Decision

The Forestry Appeals Committee 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 set aside & remit the decision to grant this Tree Felling Licence (Reference TFL00253518).

The proposal is for harvesting activity in two blocks of forestry adjacent to one another with a mixture of Sitka spruce and Norway spruce on 8.25 hectares and Common alder (1 hectare) in Ballyandrew, Co. Wexford. The operations comprise thinning and clear-felling (including subsequent replanting). The applicant indicated that the thinning and clearfell operations were to be carried out during the period 2019 to 2029.

The soil type underlying the project area is reported as predominantly podzolic in nature. The project lies within the Slaney and Wexford Harbour catchments. It is within the sub-catchment Slaney SC060. It has a direct downstream connection to the Slaney River Valley (SAC 000781). DAFM referred the license to Inland Fisheries Ireland (IFI), NPWS and Wexford County Council for consultation. There are no responses on file from IFI or NPWS. Wexford County Council responded indicating that they had no objection to the tree felling.

The proposal was referred to the DAFM Archaeologist. Conditions were subsequently recommended in respect of the levelled enclosure located on one of the sites. Adherence to Forestry and Archaeology and Forest Harvesting and the Environment Guidelines was specified. The report set out a number of conditions. On 26 August 2019 the Forest Service Inspector undertook a Stage 1 screening assessment in relation to the provisions of the Habitats Directive using the Appropriate Assessment Screening protocol in place at the time. They stated that the project area did not overlap with or was within 3km of any Natura 2000 site. In concluding that an Appropriate Assessment was not required for this project, it was deemed unlikely that this project would have a significant effect on any Natura 2000 site.

DAFM issued a licence on 30 August 2019 together with the standard felling licence conditions and additional conditions relating to the Archaeology Report

There is a single appeal against the decision to grant the licence. The grounds contend that, based on the information supplied, it is not possible to grant a licence in accordance with the provisions of the Habitats and EIA Directives. The appellant referred to a number of judgements which they stated would clarify the interpretations of the directives as follows -

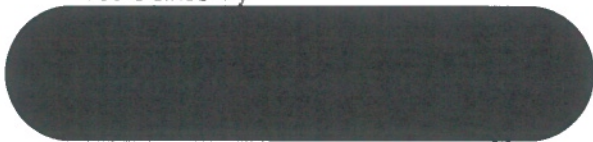

- Case C-258/11, Peter Sweetman and Others v An Bord Pleanala
- Case C-164/17, Edel Grace and Peter Sweetman v An Bord Pleanala
- Case C-323/17 People over wind and Peter Sweetman v Coillte Teoranta
- Case C-461 Brian Holohan and Others v An Bord Pleanala

In a statement to the FAC, DAFM responded to the grounds of appeal stating that the decision to issue the licence was in accordance with their procedures, S.I. 191/2017 and the 2014 Forestry Act. They stated that they were satisfied that all criteria as outlined in the standards and procedures were adhered to in making a decision on the application and that the relevant AA screening procedure relevant at the time was applied. However, DAFM stated that this project is hydrologically connected to the Slaney River Valley SAC 000781 5.6km downstream and it would now be 'screened in' as it may have an effect on the qualifying interest of this Natura 2000 site. The file does not contain any revised Appropriate Assessment Screening submitted as part of the inspector commentary on the appeal.

The FAC had regard to the record of the decision under appeal and the submitted grounds. There is no evidence before the FAC regarding other plans and projects that might have been considered in the appropriate assessment screening or may be present in the area.

The FAC cannot therefore determine whether the appropriate assessment screening, undertaken by the DAFM and referred to in the grounds of appeal, was sufficient to conclude that there is no likelihood of the proposal resulting in a significant effect on a European site itself or in combination with other plans and projects. The FAC is satisfied that this constitutes a significant error and is therefore setting aside the decision and remitting it to the Minister for the appropriate assessment screening to be undertaken and documented, to include a consideration of all relevant Natura 2000 sites, plans and projects in combination with the proposal.

Yours sincerely

Ms. Claire Kennedy (on behalf of the FAC)

An Coiste um Achomhairc
Foraoiseachta
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