



[Redacted]

31st December 2020

Subject: Appeal FAC 237/2020 in relation to licence GY08-FL0034

Dear [Redacted]

I refer to your appeal to the Forestry Appeals Committee (FAC) in relation to the above licence issued by Department of Agriculture, Food and Marine (DAFM). 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

Licence GY08-FL0034 for felling and replanting of 3.58 hectares at Kylemore (Longford By), Co. Galway was granted by the DAFM on 30th of April 2020.

Hearing

An oral hearing of appeal FAC 237/2020 was held by the FAC on 9th December 2020.

In Attendance at Oral Hearing:

FAC Members:	Mr. John Evans (Deputy Chairperson), Mr. Vincent Upton, Mr. Seamus Neely & Mr. James Conway
Appellant:	Not Present
Applicant / Representative(s):	[Redacted]
Department Representative(s):	Mr. Frank Barrett & Ms. Jade McManus
Secretary to the FAC:	Ms. Marie Dobbyn

Decision

Having regard to the evidence before it, including the record of the decision by the DAFM, the notice of appeal, submissions at the oral hearing, the Forestry Appeals Committee (FAC) has decided to affirm the decision to grant this licence GY08-FL0034.

The licence pertains to the felling and replanting of an area of 3.58 hectares at Kylemore (Longford By), Co. Galway. The forest is currently composed of Sitka Spruce (90%), Ash (5%) and other broadleaves (5%) that was planted in 1984. Replanting is to be of Sitka spruce (98%) and Alder (2%). As per the DAFM

Appropriate Assessment Screening form, the site has an underlying soil type that is approximately Basin Peats, Blanket Peats (some) (100%), the slope is predominantly moderate 0-15% and the habitat is predominantly WD4. The proposal area is in the River Sub Basin Laurencetown Stream 020 12% and River Suck 160 88%.

The application included a harvest plan, including maps, and general environmental and site safety rules related to the operations. It also includes a pre-screening report for Appropriate Assessment. The proposal was referred to Galway County Council but no response was received. The DAFM undertook and documented an appropriate assessment screening dated 28th April 2020. This found fourteen European sites (9 SACs & 5 SPAs) within 15km and found that there was no reason to extend this radius in this case. The screening determined that an appropriate assessment was not required regarding any of the fourteen European sites. An In-Combination Effects assessment is on file stating that other planning and internal records were searched for on the week of 28th April 2020. The in-combination statement concluded that the project when considered in-combination with other plans and projects, will not give rise to the possibility of an effect on the Natura 2000 sites listed. The licence was approved then with a number of conditions attached.

The decision to grant the licence is subject to one appeal. The grounds of appeal contend that there is no in-combination assessment of the replanting element, that the area replanted by Coillte exceeds 50 hectares and therefore requires EIA and no EIA has ever been carried out, that the decision to grant a licence does not comply with the Habitats Directive and the EIA Directive and the relevant decisions of the European Court of Justice, referring particularly to the Opinion of Advocate General Kokott in Case 254/19 in this regard.

At the oral hearing, DAFM summarised their approach to the licencing decision and outlined the basis for licence conditions. The applicant provided information on their activities, including field assessment, that formed the basis for their application.

In addressing the grounds of appeal, the FAC considered, in the first instance, the contention that the proposed development should have been addressed in the context of the EIA Directive. At the oral hearing the DAFM asserted its contention that the proposal does not include a class of project covered by the EIA Directive or by National legislation. In considering this aspect the FAC notes that the EU EIA Directive sets out, in Annex I, a list of projects for which EIA is mandatory. Annex II contains a list of projects for which member states must determine, through thresholds or on a case by case basis (or both), whether or not EIA is required. Neither afforestation nor deforestation is referred to in Annex I. Annex II contains a class of project specified as "initial afforestation and deforestation for the purpose of conversion to another type of land use" (Class 1 (d) of Annex II). The Irish Regulations, in relation to forestry licence applications, require the compliance with the EIA process for applications relating to afforestation involving an area of more than 50 hectares, the construction of a forest road of a length greater than 2000 metres and any afforestation or forest road below the specified parameters where the Minister considers such development would be likely to have significant effects on the environment. 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 Directive, and is similarly not covered by the Irish regulations (S.I. 191 of 2017). The decision under appeal

relates to a licence for the felling and replanting of an area of 3.58 hectares. The FAC does not consider that the proposal comprises deforestation for the purposes of land use change and neither that it falls within the classes included in the Annexes of the EIA Directive or considered for EIA in Irish Regulations. Therefore that FAC agrees that screening for EIA was not required in this case.

In addressing the grounds of appeal with regard to the Habitats Directive, 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 projects, having regard to the conservation objectives of that designated site. In this case, the DAFM undertook a Stage 1 screening, prior to the licence issue date, and found fourteen European sites within 15 km of the proposal area, River Suck Callows SPA, River Shannon Callows SAC, River Shannon Callows SPA, Glenloughaun Esker SAC, River Little Brosna Callows SPA, Ardgraigue Bog SAC, Redwood Bog SAC, Mongan Bog SAC, Fin Lough (Offaly) SAC, Pilgrim's Road Esker SAC, Mongan Bog SPA, All Saints Bog SPA, All Saints Bog and Esker SAC, and Castlesampson Esker SAC. The DAFM considered each site in turn and listed the associated qualifying interests and provided reasons for screening each site out. In addition, the DAFM completed an in-combination consideration in its screening of the proposal that examined other plans and projects in the area, including planning applications, and other forestry projects. DAFM concluded that individually the project does not represent a source, or if so, no pathway for an effect on any of these European sites exists. Consequently, the DAFM deem that there is no potential for this project to contribute to any effects, when considered in-combination with other plans and projects.)

The applicant submitted at the oral hearing that an Environmental Manager had undertaken a field inspection and described the site as a flat site and that there is a drain in the south west corner of the plot that it is stagnant on site but ultimately drains to the Laurencetown stream, which in turn drains into the River Suck SPA, and that comprises of a hydrological distance of 1.57km from the proposal area to the River Suck SPA. It was added that the River Suck SPA area then drains on into the River Shannon SAC. In addition, they submitted that there is no forest plantation in proximity of the site, that the nearest conifer plot is 1.5km to the west. It was submitted that a forest road is in place with existing access on to the public road.

The proposal is for the felling and replanting of a commercial forest managed for timber production. The forest is not located within the boundaries of any European site and is not connected with or necessary to the management of any European site. The FAC notes that the drain on the proposal area, the evidence that this feature drains to the River Suck SPA, the straight-line distance to this European site and the evidence provided as to the hydrological distance to this European site. The FAC also notes that the DAFM appropriate assessment screening for the River Suck SPA screened out this site for appropriate assessment due to the separation distance between this Natura 2000 site and the project. The FAC having considered all of this and the River Suck SPA qualifying interests which are wetland and waterbirds and the related habitat, is satisfied that no likelihood of significant effects arise from the proposal itself or in-combination with other plans and projects due to the distance involved, the size and nature of the proposal including the slope of the site and having regard to other plans and projects. Having regard to

the record of the decision and the grounds of appeal, the FAC is not satisfied that a serious or significant error or a series of errors occurred in making the decision regarding this European site.

Furthermore, the FAC is satisfied on the basis of the location and works that consideration of sites within a 15 km radius of the proposal by DAFM was in order in this instance. The DAFM documented its consideration of other plans and projects in-combination with the proposal under appeal and include both forestry and non-forestry projects. While some of the qualifying interests were truncated in the form the FAC is satisfied that this constitutes an error of a clerical nature and accepts that the full list of qualifying interests were considered as part of the screening process as confirmed at the oral hearing. The FAC notes that no likelihood of any impact on any European site was identified in the appropriate assessment screening and the procedures adopted by the DAFM in their assessment are considered acceptable in this particular instance. The FAC is satisfied that the DAFM did not rely on any measures intended to reduce or avoid effects on a European site in reaching its conclusion. The grounds of appeal do not identify a specific European site, effects or pathways of concern in relation to the decision under appeal. Based on the evidence before it, the FAC concurs with the conclusion that there is no likelihood of significant effects on any European site arising from the proposed licenced activities and having regard to the nature and scale of the proposal, the characteristics of the surrounding area and other forestry projects listed by DAFM, the FAC concludes that there is no likelihood of significant effects on any European site arising from the proposed development in-combination with other projects or land uses in the area. Based on the information before it, the FAC is satisfied that no serious or significant error or series of errors occurred in the making of the decision regarding appropriate assessment and concurs with the DAFM conclusions provided.

In deciding to affirm the decision, the FAC concluded that on the balance of the evidence before it, it is satisfied that there was no serious or significant error or a series of errors made in making the decision or that the decision was made without complying with fair procedures and that the proposed development would be consistent with Government policy and Good Forestry Practice.

Yours sincerely,



James Conway, On Behalf of the Forestry Appeals Committee