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30th December 2020

Subject: Appeal FAC 338/2020 regarding licence TY06-FL0094

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Minister for Agriculture, Food and Marine (DAFM) in respect of licence TY06-FL0094. 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 TY06-FL0094 was granted by the Department on 19th June 2020
An oral hearing of appeal TY06-FL0094 FAC 338/2020 was conducted by the FAC on 18th December 2020.

Attendees: FAC: Mr Donal Maguire (Chairperson), Mr Vincent Upton, Ms Claire Kennedy & Mr Derek Daly

Secretary to the FAC: Ms Marie Dobbyn

Applicant representatives: [REDACTED]

DAFM representatives: Mr Anthony Dunbar and Ms Eilish Kehoe

Appellant: [REDACTED]

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 to affirm the decision to grant this licence (Reference TY06-FL0094).

The application is for clear-felling and restocking of a stated site area of 7.61 ha at Commaun Beg Gortahumma, Co. Tipperary.

The application was subjected to the DAFM's AA Screening procedure, 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 Stage 2 Assessment Report completed by the inspector is included on file.

The site is described as having an underlying soil type of Lithosols, Regosols (94%) & Podzols (Peaty), Lithosols, Peats (6%). The slope is predominantly moderate at 0-15%. The habitat is predominantly WD4. The project is within the Shannon catchment (52%) and the Suir (48%) catchment area and within the waterbody Nenagh_SC_010 (100%).

The grounds of the appeals contend that the licence was issued in breach of Articles 4(3) and 4(4) of the EU HA Directive. In particular, it is submitted that the DAFM did not conduct a screening for EIA, that the information submitted by the Applicant did not represent the whole project or all impacts on the environment. It is submitted that the proposal threatens the achievement of the water framework directive and that responses from a referral body have not been adequately considered. The grounds also contend that the AA Stage 1 and 2 are not legally valid. It is submitted that licence conditions contain duplications and do not provide an adequate system of protection for wild birds, during the period of breeding and rearing consistent with the requirements of Article 5 of the Birds Directive and for protected species under Article 12 of the Habitats Directive. A number of grounds submit that further licence conditions should be attached to the licence.

In a statement to the FAC, the DAFM submitted that a desk based Appropriate Assessment (AA) screening was carried out by DAFM for European sites within 15 km from the clear-fell and reforestation project. Felling licence application information submitted by Coillte in the form of maps (GIS and softcopy), harvesting and establishment operational procedures as well as an AA Pre-screening Report and associated Pre-screening Report methodology document were considered by DAFM during the licencing process. The AA Screening report was completed by the DAFM Inspector and contains the recommendations regarding screened European Sites. All QIs/SCIs were also considered during the screening exercise. A Harvest Plan was submitted.

The DAFM undertook a screening for Appropriate Assessment to assess, in view of best scientific knowledge and the conservation objectives of the site, if the activity, individually or in combination with other plans or projects, was likely to have a significant effect on any European site within 15kms of the proposed site. In this context, particular attention was paid to the following European site(s) Lower River Shannon SAC 2165, Bolingbrook Hill SAC 2124, Lower River Suir SAC 2137, Silvermine Mountains SAC 939, Anglesey Road SAC 2125, Keeper Hill SAC 1197, Silvermines Mountains West SAC 2258 and Kilduff, Devilsbit Mountain SAC 934. These were screened out due to the location of the project area being within a separate water body catchment to that containing the Natura sites, with no upstream connection, or an absence of a direct upstream hydrological connection and the subsequent lack of any pathway, hydrological or otherwise.

In their statement to the FAC at the oral hearing, the applicant stated that they had conducted field surveys of TY06-FL00094 and that the site is located within a water basin that has no hydrological connection with any aquatic SAC. They reported that there were no relevant watercourses within the site itself and that the nearest watercourse was 300metres from the site, concurring with the DAFM findings.

The DAFM submitted that the potential for the felling and reforestation project TY06-FL0094 to result in impacts on the Special Conservation Interests and Conservation Objectives of the Slievefelim to Silvermines Mountains SPA 4165 was identified on a precautionary basis. The site of this project lies wholly within a Green Area in relating to Hen Harrier, the Special Conservation Interest of the SPA. A stage 2 AA was carried out and special licence conditions were attached to the licence to ensure that the proposed project would not prevent or obstruct the Qualifying Interests of the Slievefelim to Silvermines Mountains SPA 4165 from reaching favourable conservation status, as per Article 1 of the EU Habitats Directive.

DAFM contend that no reasonable scientific doubt remains as to the absence of adverse effects on the integrity of any European site. For the purposes of 42(16) of S.I.477/2011, the DAFM determined that the project will not adversely affect the integrity of any European Site.

The DAFM carried out an in-combination assessment and its conclusion is consistent with the applicants' in combination assessment. DAFM deems that this project, when considered in combination with other plans and projects, will not give rise to any adverse effect on the integrity of any European Site.

The FAC held an oral hearing of the appeal on 18th December 2020. The Appellant and representatives of the DAFM and the Applicant participated.

The DAFM submitted its view that the proposed felling and restocking 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 Slievefelim to Silvermines Mountains SPA 4165 from reaching favourable conservation status. The DAFM position was, that based on the above, it can be concluded, in view of best scientific knowledge and based on objective information, that the proposed project will not have an adverse effect on the integrity of any European Site(s). The Appellant submitted that the appropriate assessment was not accurate and that habitats associated with the SAC were not considered sufficiently and that the DAFM Hen Harrier protocol is not a joint protocol and that the assessment did not adequately cater for possible changes in the 'zone-status' from year to year.

Addressing the grounds of appeal the FAC noted that the DAFM had carried out a Stage 1 screening assessment for Appropriate Assessment on nine Natura sites, had screened out eight and carried out a Stage 2 Assessment on the remaining Natura site, based on the project's proximity to the Slievefelim to Silvermines Mountains SPA 4165.

The FAC noted that the licence application had been referred to IFI for observations and that their response (dated the 21/1/20) raised no issues specific to the particular site.

The FAC concluded that that this approach was correct and that there was no possibility of the proposed development giving rise to the likelihood of significant effects on any Natura 2000 site on the eight 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. Regarding in-combination effects, other projects listed are either carried out or awaiting approval. No other systematic evidence has been presented to the FAC to indicate that any of the existing projects are giving rise to any environmental problems or significant effects on any Natura 2000 site, and there is no convincing evidence before the FAC to indicate that there are other plans and projects in the area which, combined with then proposed development, would be likely to give rise to significant effects on any Natura 2000 site.

The FAC concluded that the procedures adopted by the DAFM in carrying out screening for appropriate assessment and the conclusions reached were correct, and that the proposed development alone, or in-combination with other plans or projects, would not be likely to have significant effects on any Natura 2000 site.

With regard to compliance with the Birds Directive, the FAC is satisfied that having regard to the nature, scale and location of the proposal and the European sites considered and their conservation objectives, the conditions attaching to the licence are adequate to ensure that the proposed development would not have a significant effect on the Hen Harrier or the integrity of the Slievefelim to Silvermines Mountains SPA 4165. While the Appellant questioned the nature of the DAFM Hen Harrier Protocol, the proposed mitigation measures are evidence of their consideration regarding the safeguarding of the conservation objectives of the SPA. The FAC is satisfied that the procedure, including, referrals adopted in this case is in line with the DAFM Forestry Standards Manual November 2015. Based on the information before it the FAC is satisfied that no serious or significant error occurred in the making of the decision regarding appropriate assessment.

The grounds of appeal contend that the decision does not comply with the EIA Directive. In respect of the EIA Directive, the FAC concludes that felling and reforestation do not represent a class of development covered by the Directive and that the proposed development does not involve any works, which of themselves, would be a class of development covered by the Directive. As such, the FAC does not accept that there is a requirement for EIA screening in this case. Having regard to the nature and scale of the development, and the characteristics of the surrounding environment, the FAC concluded that the proposed development alone, or cumulatively with other plans and projects, would not be likely to have a significant effect on the environment.

The grounds also refer to conditions of a licence and to conditions that the appellant suggested should be attached to the licence. The FAC considered that the Minister may attach conditions including the erection of site notices and any other environmental or silvicultural requirements as the Minister considers appropriate. The grounds do not provide reasons for the suggested attachment of conditions regarding notifications or inspections to this specific licence. The FAC considers that an authorised officer of the DAFM may undertake such inspections as they consider necessary in line with the Forestry Act 2014. The FAC noted that the Appellant did not

submit any specific details in relation to protected species and the licensed activity that do not relate to the Appropriate Assessment. Regarding the use of chemicals, the FAC considers that such use is regulated through national legislation and restrictions are included in the requirements of the licence conditions. The FAC is satisfied that no serious or significant error was made in making the decision, that the DAFM had sufficient information before it to make the decision and that the licence conditions are acceptable in this case.

In deciding to affirm the decision to grant the licence, the FAC considered that the proposed development would be consistent with Government policy and Good Forestry practice.

Yours Sincerely



Donal Maguire On Behalf of the Forestry Appeals Committee
