



[REDACTED]

6th May 2021

Subject: Appeal FAC 479/2019 regarding licence TFL00271419

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

Licence TFL00271419 for thinning of 9.78 ha of at Newport, Co. Tipperary was approved by the Department of Agriculture, Food and the Marine (DAFM) on 10th December 2019.

Hearing

A non-oral hearing of appeal FAC 479/2019 was held by a division of the FAC on 8th March 2021.

In attendance:

FAC Members: Mr. Myles Mac Donncadha (Chairperson), Mr. James Conway, Mr. Seamus Neely and Mr Derek Daly.

Decision

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notice of appeal and all other submissions received, and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to affirm the decision regarding licence TFL00271419.

The licence decision pertains to thinning of 9.78 ha at Newport, Co. Tipperary, comprising 8 ha of conifer and 1.7 ha of broadleaf trees. The predominant underlying soil type is podzolic in nature. The slope is predominantly flat 0-15%. It is in the Lower Shannon 25D catchment and the Killeengarrif (Tipperary) – SC – 010 25D-4 Sub Catchment. The site drains to the south, joining the Newport river (status of 'Good', per 2013-2018 WFD status assessment). The site is located approximately 600m from the main square in the town of Newport.

Referral was made to Southern Region Fisheries on 29th January 2019. A response was received on 22nd February 2019 stating that Inland fisheries Ireland has “no major objection to this application” subject to compliance with the Good Forestry and Water Quality Guidelines documents.

The site was desk assessed and a screening for appropriate assessment was undertaken (using the current DAFM protocol) identifying 11 Natura sites (nine SAC’s and two SPA’s) within a 15km zone of influence, all of which were screened out. The date of the spatial run used in this report was 17th November 2019. In each case the basis by which the site was screened out was that the site lay downstream of each of the Natura 2000 sites. The licence was approved on 10th December 2019 with standard conditions applying.

The grounds of appeal are broadly as follows:

- submits Natura sites were found within the 15km zone of impact and this should be a “trigger” for the requirement for an Appropriate Assessment as the development may have an effect and therefore there may be an impact.
- submits the District Inspector answered in the affirmative to Questions 3 & 4 in the Forestry Inspection Report but did not provide any evidence as to why he did so.
- submits the District Inspector found that the Natura site(s) is in a different catchment but fails to state which catchment that is in, or state why it may not have an effect.
- submits the only legal answer in this case should be that the application must be screened in for Appropriate Assessment. The following Case law is referenced to support his case: C 323/17 regarding interpretation of Article 63) of Council directive 92/43/EEC of 21 May 1992.
- Submits that safeguards in the Forest Service guidelines, requirements & procedures are in fact measures to avoid or reduce the harmful effects of the plan or project on that site.
- Submits EU and Irish case law supports his submission.

The statement from the Department regarding the appeals states that the Decision was issued in accordance with DAFM procedures, SI 191/2017 and the 2014 Forestry Act. It also states that DAFM is satisfied that all criteria as outlined in the relevant standards and procedures have been adhered to in making a decision on the 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. The EU EIA Directive sets out in Annex II 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. 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. Due to this application being for thinning of 9.8ha the FAC considers that the EIA regulation, as implemented, does not apply, nor considered for EIA in Irish Regulations.

In relation to Appropriate Assessment, 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, in accordance with Forestry Regulation S.I.191 / 2017 the DAFM as 'competent national authority' undertook a Stage 1 screening including in-combination effects in relation to the listed Natura 2000 site. The DAFM found eleven European sites within 15 km of the proposal area, and that there was no reason to extend the zone of influence in this case. The FAC consulted publicly available information from the NPWS and EPA and identified the same eleven sites. The FAC in considering the grounds of appeal that when Natura sites were identified within 15km that an appropriate assessment should have been triggered, find the DAFM in their screening considered each of the eleven sites in turn and listed the associated qualifying interests and conservation objectives and the reasons for their screening conclusions. The DAFM also undertook and recorded a consideration of other plans and projects, including forestry and non-forestry projects, and concluded that the project, when considered in combination with other plans and projects, will not give rise to the possibility of a significant effect on any Natura site. The FAC considered all of the evidence before it and is not satisfied that the DAFM erred in their decision to screen out the eleven Natura sites for Appropriate Assessment.

Regarding the grounds of appeal stating a Natura 2000 site was in a different catchment; there is no such record in the file and so no basis can be found for this grounds of appeal. Regarding the grounds of appeal that the Inspector answered in the affirmative to Questions 3 & 4 in the Certification Report but did not provide any evidence as to why he did so, the FAC finds Question 3 refers to the review of all referrals and submissions in this case. Based on the evidence before it that only one referral and submission was made in this case the FAC finds this response adequate. Question 4 refers to the inspector having sufficient information to make a sound judgement on the likelihood of the project having a significant effect on a European site. Having reviewed the evidence before it, including the Appropriate Assessment screening, the FAC is satisfied that the inspector had sufficient information before him to make his decision.

In considering the appeal the FAC had regard to the record of the decision, the submitted grounds of appeal and submissions received. The FAC is satisfied that no serious or significant error or series of errors was made in making the decision and that the decision was made in compliance with fair procedure. 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,

A large black rectangular redaction box covering the signature of Myles Mac Donncadha.

Myles Mac Donncadha On Behalf of the Forestry Appeals Committee

