



[REDACTED]

3rd December 2020

Subject: Appeal FAC535/2020 regarding licence WW03-FL0069

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 WW03-FL0069 for felling and replanting of 13.09 ha at Sraghmore, Co. Wicklow was approved by the Department of Agriculture, Food and the Marine (DAFM) on 3rd July 2020.

Hearing

A hearing of appeal FAC535/2020 was held by the FAC on 11th November 2020. In attendance:

FAC Members: Mr. John Evans (Chairperson), Mr. Seamus Neely, Mr. Vincent Upton, Mr Derek Daly

Secretary to FAC: Ms. Ruth Kinehan

Appellant: [REDACTED]

Applicant: [REDACTED]

DAFM Representatives: Mr. Frank Barrett (Forestry Inspector), Mr. Joe O'Donnell

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 and submissions received, and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister regarding licence WW03-FL0069.

The licence pertains to the felling and replanting of 13.09 ha at Sraghmore, Co. Wicklow. The forest is currently comprised of Sitka spruce and the site would be replanted with the same species. The site is described as being on an east facing slope 0 to 15% gradient and on mineral and peat soils, comprised of Podzols (Peaty), Lithosols, Peats (100%). The application included a harvest plan, including maps, and general environmental and site safety rules related to the operations. An appropriate assessment pre-screening report was also provided with the application.

The DAFM undertook and documented an appropriate assessment screening that found ten European sites within 15km and found that there was no reason to extend this radius in this case and that appropriate assessment was required regarding 0004040 Wicklow Mountains SPA due to the proximity of the project to the Natura site. An appropriate assessment report and determination was undertaken and dated 22nd June 2020 with ecological review on the 2nd July 2020. The licence was approved with a number of conditions attached which related to the mitigation of effects as outlined in the appropriate assessment report.

There is one appeal against the decision. The grounds contend that the licence was issued in breach of Articles 4(3) and 4(4) of the EU EIA Directive.

In particular, it is submitted that the DAFM did not have regard to the criteria in Annex II of the Directive; that the DAFM, as the competent authority, has failed to carry out screening to determine the requirement for EIA; that the information submitted by the Applicant did not represent the whole project and that the competent authority did not consider information of the whole project in a screening and the application has not described any aspects of the environment which are likely to be significantly affected. It is stated that the Stage 1 and Stage 2 AA determinations are not legally valid. It is submitted that the licence threatens the underlining waterbody and that a nationally designated site, feedback from a designated body and recreational use of the forest were not considered. There are a number of submissions and statements regarding licence conditions including that the Licence conditions do not provide a system of protection for wild birds during the period of breeding and rearing consistent with the requirements of Article 5 of the Birds Directive or a system of strict protection for the animal species listed in Annex IV (a) of that Directive in their natural range, prohibiting deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration. It is also indicated in the appeal that the DAFM has not sought the opinion of the general public under Article 6 (3) of the Habitats Directive on the Appropriate Assessment Determination

In a statement to the FAC, the DAFM submitted that the standard operational activities of clearfelling and replanting already established forests are not included under the specified categories of forestry activities or projects for which screening for EIA is required as set out in Schedule 5 Part 2 of the Planning and Development Regulations 2001, as amended, and in Regulation 13(2) of the Forestry Regulations 2017. The DAFM contended that screening for EIA was not required in this case for the standard operational activities of a) thinning or b) clear-felling and replanting already established forest areas are not so categorised and therefore a screening assessment for sub-threshold EIA does not need to be carried out by the Department in the case of applications for TFLs for these particular activities and thus Articles 4(3) and 4(4) of the Directive are not applicable.

The 13.09 ha felling and reforestation project licenced as WW03-FL0069 has been subject to the DAFM's AA Screening procedure and the statement goes on to describe the appropriate assessment procedure adopted by the DAFM in processing the licence and the date at which the appropriate assessment determination was signed off. It is further submitted that the screening relied on information from the Applicant in relation to considering the potential for in-combination effects with other plans and

projects and that a separate screening and determination assessment was undertaken prior to the licence being issued.

At the hearing the DAFM reasserted their contention that the proposal does not include a class of project covered by the EIA Directive or National legislation. They submitted that their protocols were developed with ecologists and the NPWS and that they are satisfied that they were acceptable which in this particular case applied to the hen harrier species and that DAFM receives ongoing updates in relation to the species in the area with the most recent received in May 2020. The licence includes conditions specific to the protection of the hen harrier species. The licence also included conditions for the protection of water quality. The Applicant described the documents provided with the application contended that the site has good ground condition and no watercourses. They submitted that all chemicals are used in line with national regulations and where treated plants are used this treatment occurs off site with some additional spot spraying undertaken on a risk basis. They submitted that signage and diversions are used in areas used for recreation where required. They submitted that the proposal does not involve deforestation and is not covered by the EIA Directive.

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 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 are 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 13.09 ha. The FAC does not consider that the proposal comprises a type of activity that falls within the classes included in the Annexes of the EIA Directive or considered for EIA in Irish Regulations.

In regard to any requirement for the curtailment of felling activities during the bird breeding and rearing season, the granting of the felling licence does not exempt the holder from meeting any legal requirements set out in any other statute. DAFM indicated that, as a matter of course, updates in relation to the status of the species occur and conditions and site-specific mitigations identified in the AA Report and AA Determination Statement were attached as conditions of the licence issued for felling and reforestation project WW03-FL0069 specific to the protection of the species.

Under Article 6(3) of the Habitats Directive, a 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 or projects, having regard to the conservation objectives of that designated site. In this case, the DAFM undertook a Stage 1 screening in relation to ten Natura 2000 sites and concluded that an appropriate assessment should be undertaken in relation to Wicklow Mountains SPA with other sites screened out. An appropriate assessment report and determination were prepared, and mitigation measures were derived and incorporated into the licence conditions.

In considering the appeal and before making a decision, the FAC examined the information submitted in relation to the proposal including AA screening and determination of DAFM.

The site is not located within a European site. There are ten identified European sites within 15km and nine of these sites have no hydrogeological or other link to the felling site. The proposal is not connected with or necessary to the management of any European site. Potential effects were examined in relation to 0004040 Wicklow Mountains SPA due to the proximity of the project to the Natura site. The Qualifying Interests of the European site are the Merlin *Falco columbarius* and Peregrine *Falco peregrinus* with the conservation interest to maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA. There is no reason to conclude that the proposed development would impact on the favourable conservation condition of the bird species listed. There are specific measures and conditions identified to protect the favourable condition of the species.

The FAC concluded that the proposal will not impact a European site due to the absence of hydrological connectivity, the degree of separation and the nature of the species and habitats concerned. The FAC noted a number of conditions related to the protection of species protection and water quality on the licence. The FAC does not consider that the proposal would result in any real likelihood of a significant effect on the environment given the nature, small scale of the proposal and the characteristics of the surrounding area.

The FAC considered that it had adequate information in respect of the characteristics of the proposal, the location, and types and characteristics of potential impacts in order to determine if the proposed development, alone or cumulatively with other plans and projects, would be likely to have significant effects on the environment. The grounds of appeal do not identify any particular European site, pathway or significant effects of concern in relation to the proposal. The procedures adopted by the DAFM in their assessment are considered acceptable and the FAC concurs with the conclusion of the appropriate assessment that the project will not adversely affect the integrity of a European Site.

Regarding water quality the proposal is described as not containing an aquatic zone. Based on the maps provided, the forest is well set back from any watercourse and separated by existing forest and on a moderate slope with a mixed mineral and organic soil type. The licence conditions require the implementation of a series of measures designed to protect water quality during operations, including the management of existing drains, and reflect the submission made by Inland Fisheries Ireland. The Applicant must also contact the IFI prior to operations commencing. The County Council identified the

area as high status for water quality. The Appellant did not submit any specific information regarding effects on water quality or pathways related to the proposal. Based on the information available to it, the FAC is satisfied that the proposal does not pose a significant threat to water quality.

The grounds submit that the Harvest Plan is not consistent with the requirements of the Interim Standard for Felling & Reforestation, while not submitting specific concerns. A harvest plan was provided with the application which outlined inventory and restocking details and maps identifying the proposal, forest roads, water courses, archaeological features, designated sites and other environmental features. The DAFM submitted at the oral hearing that the Applicant provided such plans as a matter of course on its felling applications. Further details of the proposal are provided in the appropriate assessment report. The FAC is satisfied that the application contains sufficient information to facilitate the decision-making process of the DAFM and that no significant or serious errors or a series of errors was made in this case.

Regarding the 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. In this instance, the licence requires the erection of a site notice following the directions of the DAFM. 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.

Regarding suggested recreational use the licensee must erect a site notice and close off the forest or part therefore which is used for recreation during operations in line with the licence conditions, including the Standards for Felling and Reforestation. In regard to protected species, the granting of the felling licence does not exempt the holder from meeting any legal requirements set out in any other statute.

The FAC noted that the Appellant did not submit any specific details in relation to protected species and the licensed activity. Regarding the use of chemicals the FAC considers that such use is regulated through national legislation and the obligations of the licensee in this regard are not diminished, and further restrictions are included in the requirements of the licence conditions. The Appellant further submitted that notifications are made under the voluntary sustainable forest management certification scheme of which it is a member. Regarding the conditions attached to the licence the approval of which forms the subject of the appeal, the FAC concluded that a significant or serious error or series of errors had not been made in the decision making process and that it would not vary the licence to attach further conditions in this case.

In deciding to affirm the decision of the Minister to grant the Licence, the FAC concluded that the proposed development would be consistent with Government policy and Good Forestry Practice. The FAC is satisfied that there was no serious or significant error or series of errors made in making the decision or that the decision was made without complying with fair procedures. Before making its

decision, the FAC considered all of the information submitted with the application, the processing of the application by the DAFM, the grounds of appeal and any submissions received.

Yours sincerely,

A black rectangular redaction box covering the signature of Derek Daly.

Derek Daly On Behalf of the Forestry Appeals Committee