



29 January 2021

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FAC ref: 291/2020

Subject: Appeal in relation to felling licence MN01-FL0078

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Minister for Agriculture, Food and Marine in respect of licence MN01-FL0078.

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 MN01-FL0078 was granted by the Department of Agriculture, Food and Marine (DAFM) on 28 May 2020.

Hearing

An oral hearing of appeal 291/20 was conducted by the FAC on 21 January 2021.

Attendees:

FAC: Mr Des Johnson (Chairperson), Mr Luke Sweetman, Ms Paula Lynch & Mr Pat Coman

Secretary to the FAC: Mr Michael Ryan

Applicant representatives: [REDACTED]

DAFM representatives: Mr Frank Barrett & Ms Eilish Kehoe

Mr Dan Molloy of the Agriculture Appeals Office attended as an observer

Decision

The Forestry Appeals Committee (FAC) considered all of the documentation on the file, including application details, processing of the application by the 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 MN01-FL0078).

The proposal is for clearfelling and replanting on a stated site area of 4.69ha. at Creaghan, Co. Monaghan. Trees to be felled are predominantly Norway Spruce and Sitka Spruce, with some Oak and other broadleaves. The trees were planted in 1964. Replanting would be with Norway Spruce (4.46ha)

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with 0.23ha open space provided for. Documents submitted include a 'harvest plan' and Appropriate Assessment Pre-screening Report. A further applicants Pre-screening Report is dated 07.05.20. Underlying soils are stated to be Acid Brown Earths, Brown Podzolics (9%), Surface Water Gleys, Groundwater Gleys (88%) and variable (4%). The slope is stated to be predominantly moderate. The site is in the River Sub-Basin Blackwater (Augher). This has approximately 4% forest cover.

The DAFM carried out Appropriate Assessment screening on designated sites within a 15km radius of the project lands. Three sites were identified as follows: - Slieve Beagh SPA, Slieve Beagh-Mullaghfad-Lisnaskea SAC and Slieve Beagh SAC. The sites were screened out for Stage 2 Appropriate Assessment for reasons of separation distances (first two listed sites) and location in a separate waterbody catchment with no upstream connection and no pathway in the case of Slieve Beagh SAC. In-combination effects considered included non-forestry projects – milking parlour and dwellings (2), and forestry related projects (since 2017) - afforestation (4), forest roads (1), private felling (2), Coillte felling (3). DAFM confirmed that the screening conclusion was a consideration in the making of the decision to grant the licence.

DAFM referred the application to Inland Fisheries Ireland (IFI). In response, the IFI noted that the site is close to a tributary of the Ulster Blackwater River, and the Ulster Blackwater is a short distance downstream. Measures should be put in place to prevent deleterious matter entering the watercourse. Current Forest Service Guidelines should apply. The Ulster Blackwater River contains salmonid spawning and nursery habitat. It is important to ensure no deterioration in existing conditions in water quality. The application was also referred to Monaghan County Council but no response is recorded.

There is a single appeal against the decision to grant the licence. The grounds of appeal contend that there is a breach of Article 4(3) of the EIA Directive as there was no screening for EIA. There is a breach of Article 4(4) of the EIA Directive.as details on the aspects of the environment likely to be significantly affected have not been described. On the same date as the application for this licence was submitted a further 2 applications were submitted for clear felling licences for the same FMU totalling 15.32ha. This licence and associated operations threaten the achievement of the objectives of the underlying waterbody. Clear felling has the capacity to impact on water quality. In the absence of appropriate consultation and mitigation, this application and associated operations threaten the integrity of a nationally designated site. The licence does not provide a system of protection for all species of birds during the period of breeding and rearing consistent with the requirements of the Birds Directive. The licence should contain a condition requiring the licensee to notify the Minister at both the commencement and conclusion of operations. The licence should include stringent and enforceable conditions regarding notification to appropriate bodies, groups and the public concerned in the case of the spraying of chemicals.

In response the DAFM state that the proposed development is not of a class covered by the EIA Directive. The DAFM applies a wide range of checks and balances in relation to the protection of water. A wide range of operational measures are applied to prevent direct and indirect impacts on water quality. For reforestation, Standards applied require setbacks from aquatic zones. Silt trapping and slow-water damming of forest drains are required during felling. The application was subject to DAFM's screening procedure (Nov. 2019) and European sites within a 15km radius were assessed. Killyhoman pNHA is a small area of wet scraw supporting a marshy vegetation, which is partially



invaded by trees. The pNHA is 150-200m to the east. The proposed development is on a north-west slope on a drumlin at Creaghan with drainage from the site in a westerly and north-westerly direction. The Minister may attach or vary conditions on a licence at any stage. It is a principle of law that, if the grant of a consent does not expressly exempt the holder from an obligation to obtain a second consent or to adhere to any other restrictions on the timing of activities or similar, where set out in statute elsewhere, those other obligations and restrictions apply. There is no legal requirement for forest owners to inform adjacent landowners of their intention to spray.

An Oral Hearing was held on 21 January 2021. The FAC met in person (Mr Luke Sweetman (FAC) participated electronically). The DAFM and applicants attended and participated electronically. The appellant did not attend or participate. The DAFM detailed the procedures followed in making its decision. Oak trees (planted around 1900) occupy a small percentage of the canopy cover and it is intended to retain any of these where possible. The site is on part of a drumlin in a fork between two tributaries of the River Blackwater, which flows northwards. There is no hydrological connection to the river from the project lands and, at the nearest point, there is a separation distance of approximately 25m with flat agricultural land intervening. Slieve Beagh SAC is approximately 7km separated and Slieve Beagh-Mullaghfad SAC is approximately 7.1km separated. The applicants stated that the site was field inspected in May 2020. It is on a gentle slope and underlying soils are predominantly gleys. There is no direct hydrological connection to the Ulster Blackwater River. Responding to FAC questions, the applicants stated that the adjoining lands to the south-east were replanted about 2012 and have now 'greened up'. The site is separated from the River Blackwater by flat agricultural land. Broadleaves would be retained and planted around the perimeter of the plantation to mitigate visual impact.

In addressing the written 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 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 (nor clear-felling) 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 FAC concludes that the felling and subsequent replanting, as part of a forestry operation, with no change in land use, does not fall within the classes referred to in the Directive, and similarly are not covered in the Irish Regulations (S.I. No. 191 of 2017). The FAC considers that there is no convincing evidence before it that the purpose of the proposed felling is for the conversion to another type of land use. The proposed development does not include any works, which themselves, would constitute a class of development covered by the EIA Directive. As such, the FAC concluded that there is no breach of any of the provisions of the EIA Directive.

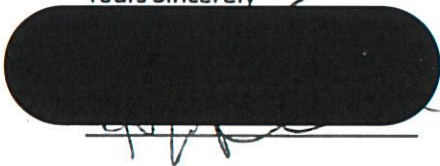
The evidence before the FAC is that there is no direct hydrological connection from the site to any watercourse. The site is separated from the nearest watercourse by approximately 25m of flat agricultural lands. Having regard to the nature and scale of the proposal and to the separation distances to the nearest watercourses and the nature of the intervening lands, the FAC concluded that there is no convincing evidence before it to indicate any likelihood that the subject licence and associated operations would have a detrimental impact on water quality or would threaten the achievement of the objectives of the underlying waterbody.

The appellant contends that, in the absence of appropriate consultation and mitigation, the proposed development would threaten the integrity of a nationally designated site. The evidence before the FAC is that the Killyhoman pNHA is a small area of wet scraw supporting a marshy vegetation, which is partially invaded by trees. The pNHA is 150-200m to the east. The FAC concluded that the appellant had failed to provide any convincing evidence in regard to a pathway for effects to support his contention that the proposed development would have any significant impact on this pNHA. The FAC concluded that the proposed development would not be likely to have any significant effect on the Killyhoman pNHA.

The appellant contends that the licence should provide a system of protection for wild birds during the period of breeding and rearing and of Annex IV species, but provided no specific information in respect of the presence of wild birds or Annex IV species on the project lands. In these circumstances, the FAC concluded that conditions, of the nature requested by the appellant, should not be attached to the licence. Compliance with the licence conditions and enforcement, where appropriate, are matters for the DAFM and the FAC considers that there is no convincing reason to require additional conditions attaching to the licence in this respect. The FAC observed that the use of plant protection products in Ireland is governed by SI 155 of 2012 and SI 159 of 2012, which are based on and give effect to EU Directive 2009/128/EC (concerning the sustainable use of pesticides) and Regulation (EC) No. 1107/2009 (concerning the placing of plant protection products on the market). There is no mandatory requirement to inform adjoining landowners of the intention to spray.

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

Yours Sincerely

A large black oval redaction box covers the signature of Pat Coman. Below the redaction, a handwritten signature is visible, which appears to be 'Pat Coman'.

Pat Coman, on behalf of the FAC