



An Coiste um
Achomhairc
Foraoiseachta
Forestry
Appeals
Committee

[REDACTED]
[REDACTED]
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[REDACTED]

March 30th, 2021.

FAC ref: 028/20

Subject: appeal in relation to Licence TFL00325319.

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

Felling Licence TFL00325319 was granted by the Department of Agriculture, Food and the Marine (DAFM) on December 19th, 2019.

Hearing

An oral hearing of appeal FAC ref: 028/2020 regarding the decision to issue the licence TFL00325319 was conducted by FAC on February 16th, 2021.

Attendees:

FAC: Mr Des Johnson (Chairperson) Mr Pat Coman,
Mr Luke Sweetman, Mr Dan Molloy.

Administrative Secretary: Mr Michael Ryan.

Applicant representatives: [REDACTED] did not participate.

DAFM Representatives: Ms Eilish Kehoe, Mr Momme Reibisch.

Appellant: [REDACTED] did not participate.

An Coiste um Achomhairc
Foraoiseachta
Forestry Appeals Committee

Kilminchy Court,
Portlaoise,
Co Laois
R32 DWT5

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Decision

The 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 of the Minister regarding Licence TFL00325319

The proposal is for the thinning of 9.50ha in Cloontrast, Castlereagh, Co Roscommon. The site is planted with 100% Sitka Spruce. In line with details as provided by the DAFM, the soil type is mainly peaty in nature, the slope is mainly flat to moderate. The project lies in a rural landscape south of Castlereagh in the Upper Shannon catchment and Suck water body. The Suck river flows to the south east, approximately 10 metres from the closest point of the site to the river.

The applicant submitted an application pack which includes maps and a document entitled 'Harvest Plan'. The DAFM requested the applicant to re-submit the 'harvest plan' with further details on extraction routes and service areas. The plan was re-submitted on November 7th, 2019. The DAFM did not refer the application to any referral bodies.

The DAFM carried out Appropriate Assessment (AA) screening on May 8th 2019, the report screened two Natura sites with 3km of the project site; Cloonchambers Bog SAC 000600 and Corliskea /Trien/Cloonfolliv Bog SAC0002110.

The DAFM carried out further AA screening on December 16th, 2019, sixteen sites were identified within a 15km radius of the proposed site.

The following sites were screened out for AA for reason of *'The position of the project area downstream from the Natura site, and the subsequent lack of any hydrological connection'*

- o Cloonshanville Bog SAC
- o Coolcam Turlough SAC
- o Corliskea/Trien/Cloonfolliv Bog SAC
- o Croaghill Turlough SAC
- o Derrinea BOG SAC
- o Drumalough BogSAC
- o Errit Lough SAC
- o Kilsallagh Bog SAC.
- o Lisnageeragh Bog and Ballinastack Turlough SAC
- o Mullygollan Turlough
- o Williamstown Turlough SAC.

The following three sites were also screened out for AA for reason of, *'The position of the project area downstream from the Natura site, and the subsequent lack of any hydrological connection. The unsuitability of the project area for use by any species listed as a qualifying interest of the Natura site'*.

- Bellanagare Bog SAC 000592
- Carrowbehy/Caheer Bog SAC 000597
- Cloonchambers Bog SAC 000600

Of the remaining two Natura 2000 sites, Lough Corrib SAC 000297 was screened out as a result of, *the location of the project area within a separate water body catchment to that containing the Natura site, with no upstream connection, and the subsequent lack of any hydrological connection'*. Bellanagare Bog SPA 004105 was screened out as a result of, *'the unsuitability of the project area for use by any species listed as a qualifying interest of the Natura site' Greenland White-fronted Goose. The species is listed on Annex I of the Birds Directive and is on the Birds of Conservation Concern in Ireland (BoCCI) Amber List as the majority of the winter population is located at less than 10 sites, with the majority occurring at the Wexford Slobbs. Bellanagare Bog SPA 004105 is not one of these 10 overwintering sites. The International Single Species Action Plan for the Conservation of Greenland White-fronted Goose (AWEA, 2012, Technical Series No.45) identifies that the Bellanagare Bog population have abandoned the SPA.*

The Forestry Inspector stated as part of the overall conclusion *'No likelihood of a significant effect on any European site, and AA not required'*

The DAFM also carried out an in-combination assessment on November 25th. The DAFM consulted various planning websites, Roscommon Co Council: domestic partial demolition and house extension, two separate requests relating to extensions for existing dwellings, retention application on dwelling, construction of forest bell mouthed entrance onto public road and development for thirty five dwellings going back to 2006. The DAFM iForis database was also reviewed, forestry related projects relate to, six afforestation, four forest roads, five private felling licences and five other Coillte felling licences from 2017.

The DAFM in-combination statement concluded that this 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 DAFM issued the licence on December 19th, 2019 exercisable for a period of eight years from the date of issue and is subject to standard conditions (a) – (g) plus condition (h) stating

- Standards for Felling and Reforestation 2019 apply.
- Adhere to Forestry and Water Quality Guidelines.

There is one appeal against the decision to grant the licence. In summary the grounds of appeal contend:

- The Forest service identified Natura 2000 sites within 15kms of the project site. This is the trigger for Appropriate Assessment
- There is no evidence to support the Inspector's assessment in respect of AA
- The Inspector identifies the Natura 2000 site as being in a different catchment to the project lands but does not identify the catchment. In this case the only legal answer is screening in for Appropriate Assessment
- Mitigation measures cannot be taken into consideration in screening for AA. Forest Service safeguards are mitigation measures.
- It is only necessary to show that there is the possibility of an effect to trigger AA.

The FAC did not receive a written statement from the DAFM to the grounds of appeal as set out by the Appellant.

The FAC held an oral hearing on February 16th, 2021, all parties were invited to attend and participate. The FAC sat in person and remotely and the DAFM participated remotely. Neither the appellant nor the applicant participated.

At the hearing, the DAFM set out processing procedures undergone in issuing the licence, the application was desk assessed and there were no referrals to referral bodies. The DAFM also pointed out, that a second harvest plan was requested from the applicant which was not available to the FAC on the day of the hearing, the revised plan was submitted to DAFM on November 12th, 2019. The amended sections of the plan were read into the record by the DAFM for the purpose of the oral hearing. The request forwarded by the DAFM on November 4th, 2019, requested the applicant to re-submit map details relating to location of machine maintenance, chemical storage refuelling and repair areas. A copy of the revised plan was forwarded to the FAC later that day

As part of FAC questioning, the DAFM were asked why the application was not referred to Inland Fisheries Ireland, the DAFM stated the project is not located in a Fisheries sensitive area. The FAC queried the DAFM on the risk of flooding in relation to the proximity of the site to the River Suck, the DAFM replied, the water table is significantly lower than the site and as a result the risk of flooding is low. The FAC sought clarification on the existence of a watercourse at the southern edge of the site and if the stream runs into the River Suck, the DAFM clarified the stream runs into the River Suck. Clarification was also sought by the FAC as to the date the second AA Screening was carried out, the DAFM stated December 16th, 2019. Regards other forestry projects the DAFM confirmed a 545m forest road CN83937 was completed to payment stage in October 2020, and a clear-fell TFL00127818 (20.27ha) is not yet completed.

The FAC in addressing the grounds of appeal considered the appellants contention that the DAFM identified Natura 2000 sites within 15km of the application site and that this is the trigger for AA (stage 2). The FAC noted that the DAFM initially completed AA screening within 3km of the project area on two Natura sites, both sites were screened out for AA and took mitigations into account in screening out for stage 2 AA. It also noted that on December 16th, 2019, the DAFM carried out a further AA screening (stage 1) in line with the requirements

of the EU Habitats Directive on 16 Natura 2000 sites. The screening was carried out on European Sites within a 15km radius of the proposed development. The FAC considered that having regard to the nature and scale of the proposed development, there was no necessity to consider sites outside of this radius.

The DAFM considered the proposed developments with regard to all 16 Natura 2000 sites identified and concluded there is no likelihood of a significant effect on any European site within a 15km radius and AA is not required.

In screening the proposal, the DAFM completed an in-combination assessment of the proposal with other plans and projects, including CN83937 and TFL00127818.

The FAC noted the Lough Corrib SAC is within a separate water body catchment, Corrib 30 with no upstream connection and subsequent lack of any hydrological connection. Based on the evidence before it, the FAC considers that the procedures adopted in the revised screening by DAFM were in accordance with the provisions of the Habitats Directive and that the conclusion reached was sound.

The FAC noted the nearest downstream Natura 2000 site from the proposal is the River Suck Callows SPA at c 33km / EPA website for which the qualifying interests are Whooper swan, Wigeon, Golden Plover, Lapwing, Greenland White-fronted Goose, Wetland and Waterbirds and based on the scale and nature of the proposal and this intervening distance the FAC is satisfied no likelihood of any significant effects arise.

The FAC considers that the licence conditions which prescribe adherence to DAFM Standards, Requirements and Guidelines were attached in order to reflect compliance with good forest practice and that in the circumstances of this case, these do not constitute mitigation measures for the protection of Natura 2000 sites.

In considering the appeal, the FAC had regard to the record of the Decision and the submitted grounds of appeal.

The FAC is satisfied that the DAFM did not make a serious or significant error or series of errors in making the decision to issue TFL00325319 and the decision was made in line with fair procedures.

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

Yours sincerely


Dan Molloy, on behalf of FAC.

