



[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

31st March 2021

Subject: Appeal FAC037/2020 in relation to felling licence TFL00376219

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

Thinning licence TFL00376219 was issued by the Department of Agriculture, Food and the Marine (DAFM) on the 9th January 2020.

Hearing

An oral hearing of appeals FAC037/2020 was held by the FAC on the 4th March 2021.

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

Secretary to the FAC: Mr Michael Ryan

Appellant: [REDACTED] did not participate

Applicant: [REDACTED]

DAFM representatives: Ms Eilish Kehoe, Mr Eugene Curran

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 set aside and remit the decision to grant felling licence TFL00376219.

This licence is for the thinning of 7.53ha across two plots in Milleeny, Co Cork. The species to be thinned are Sitka spruce, Japanese larch and Scots pine. The underlying soils are predominately Podzols and the slope is predominantly flat to moderate (<15%). There are no watercourses within the application site which is located in the Lee, Cork Harbour and Youghal Bay Catchment, the Sullane_SC_010 Sub-Catchment, and the Sullane_020 River Sub-Basin. The Sullane_020 Waterbody was assigned 'Good' status and deemed to be 'Not at Risk' by the Environmental Protection Agency in the 2013-2018 reporting period.

The applicant submitted a felling licence application with associated maps. In completing a desk-assessment of the licence application, the DAFM carried out a Stage 1 Appropriate Assessment (AA) screening that considered nine Natura 2000 sites within 15km of the proposal. All of these sites were screened out for Stage 2 AA for reasons provided, including *the absence of an aquatic zone within or adjoining the project area, the location of the project area in a separate water body catchment to that containing the Natura site, with no upstream connection, and a subsequent lack of any hydrological connection, and mandatory adherence to standard safeguards integral to the project, as set out in the application and in published Forest Service guidelines, requirements and procedures in particular.*

The DAFM referred the application to a DAFM Archaeologist who responded stating there are no archaeological/architectural protection issues with this thinning and adherence to relevant guidelines was recommended. The licence issued on the 9th January 2020 and is subject to relatively standard conditions (a) to (g) plus (h) i) harvest in dry weather only apply ii) all guidelines to apply.

There is one appeal against the licence. The written grounds of appeal were considered in full by the FAC, the following is a summary of the issues raised:

- The Forest Service identified Natura 2000 sites within 15kms of the project site. This is the trigger for AA.
- 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 Appropriate Assessment.

The DAFM submitted a response to the grounds of appeal in a written statement to the FAC:

This is a thinning and has no hydrological connections. There is no obvious threat to any Natura sites.

The FAC held an Oral Hearing on the 4th March 2021. The appellant did not participate and the applicant and the DAFM participated remotely. The DAFM outlined the background to their decision to issue the licence and stated that the application was referred to the DAFM Archaeologist as it was within 200m of an Archaeological site. They stated that, as confirmed by a field inspection on 3rd March 2020, there are no watercourses within the site and that the proposal posed no threat to the Mullaghanish to Musheramore Mountains SPA, for which Hen Harrier is the Special Conservation Interest, or St. Gobnet's Wood SAC. The applicant expressed their disappointment with the fact that the licence had been appealed. The FAC queried had an in-combination assessment been carried out and the DAFM stated that they did not have one on file in iFORIS and were unable to confirm that one had been completed. In response to FAC questions, the DAFM also stated that there was no Harvest Plan on file. The FAC queried why the Inspector's Certification document stated there are aquatic zones present on the site when the rest of the evidence before the FAC was that there are none. The DAFM stated that there is a technical error in iFORIS which leads to the system incorrectly stating that there are aquatic zones present, even when this is not the case. Responding to a FAC query, the DAFM stated that the figures for the level of digitised forest area licenced for thinning or clearfell within 5km, both presently and five years ago, seemed a bit low but that there was no information to indicate they were incorrect.

In addressing the grounds of appeal, the FAC had regard to the contention that the DAFM had identified Natura sites within 15km of the application site and that this should trigger Stage 2 AA. The FAC noted that the DAFM completed a Stage 1 AA screening which considered the potential for the proposed development to have a significant effect, individually, on Natura sites within a 15km radius. The DAFM

identified nine Natura sites within this distance and all of these sites were screened out for Stage 2 AA with the reasons for doing so provided. However, there is no evidence before the FAC that the DAFM carried out an in-combination assessment. The FAC considers that the DAFM made a significant error in failing to consider the proposal's potential to contribute to a cumulative effect, with other plans and projects, on Natura 2000 sites within 15km of the application site. The FAC observed that the DAFM provided reasons for the screening out of each Natura site and that in the majority of cases, the basis for screening out was the lack of hydrological connection between the project lands and the Natura site. The FAC noted that the DAFM also screened sites out for Stage 2 AA due to the *mandatory adherence to standard safeguards integral to the project, as set out in the application and in published Forest Service guidelines, requirements and procedures in particular*. Having regard to the appellant's grounds of appeal, the FAC considers that the DAFM applied conditions to the felling licence which are relatively standard and amount to safeguards that are integral to any project of this nature and there is no convincing reason to conclude that these measures are aimed at avoiding or reducing the impact of the proposal on the Natura 2000 network of designated sites. Regarding the lack of a Harvest Plan for the proposed development, the FAC noted that the licence application was submitted in July 2019, prior to the publishing of the Interim Standards for Felling and Reforestation (October 2019), which requires that all felling licence applications (thinning and clearfell) be accompanied by a Harvest Plan.

Based on the evidence before it, the FAC concluded that the DAFM made a serious error in failing to assess the potential cumulative effect of the proposal, in combination with other plans and projects, on Natura 2000 sites. In these circumstances, the FAC concluded that the decision to issue felling licence TFL00376219 should be set aside and remitted to the Minister to carry out a new AA screening of the proposed development on its own and in combination with other plans and projects regarding Natura 2000 sites within a 15km radius and if necessary, an AA, before making a new decision in respect of the proposed development.

Yours sincerely,

A black rectangular redaction box covering the signature of Luke Sweetman.

Luke Sweetman on Behalf of the Forestry Appeals Committee