



[REDACTED]

30th March 2021

Subject: Appeal FAC 274/2020 regarding licence TFL00153418

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 TFL00153418 relates to a proposal initially made on the application form of 03/04/2018 for the thinning of 5.17 hectares and felling of 2.2 hectares of forest at Leggatinty and Derreen, County Roscommon on the 3rd April 2018. A revised application for 4.49 hectares thinning (plot 1) and 3.16 hectares clearfell (plot 2) was submitted to DAFM on the 27th May 2019. The licence as issued refers only to thinning for plot 1 (4.49 hectares). In relation to hydrological connections, the site is within the Carricknabraher_10 River Waterbody for which the WFD status is good and is indicated as not being at risk.

The reduction of part of the original licence area and the amendments it would appear arises from part of the lands which are the subject of the licence also being the subject of a Compulsory Purchase Order (CPO) for a new section of a National Primary Route. The CPO maps and schedule includes Folio 270a.201 which refers to 2.2 hectares of forestry and this plot of land largely equates to plot 2 of the licence application.

The appeal was considered by FAC Members Mr. Myles Mac Donncadha (Chairperson), Mr. John Evans, Mr. Derek Daly, and Mr Seamus Neely on the 22nd March 2021.

Decision

Having regard to the evidence before it, including the record of the decision by the DAFM, the notice of appeal, submissions received including the following considerations, the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister regarding licence TFL00153418.

Licence

The licence as indicated initially pertained to the thinning and part felling of 7.65 ha of forest. The thinning area consists of lands which were planted circa 2000 and the maps and details associated with the application refer to felling 100% Sitka spruce. The plot for felling is of a similar age and is also planted as Sitka Spruce. The predominant soil type underlying the project area is predominantly highly modified peat and peaty podzols in nature. The slope is predominantly flat to moderate. The project area is crossed by / adjoins an aquatic zone. The vegetation type within the project area comprises conifer plantation.

The proposal was referred to Roscommon County Council who made two separate responses raising no specific objection to the licence and recommended conditions. The licence was also referred to the NPWS who indicated that they had no comment to make in relation to the licence.

An Appropriate Assessment (AA) screening was carried out and recorded on the file. The screening considered nine sites within 15km and that there was no need to expand this radius in this case and other plans and projects considered are recorded. The European sites considered were Bellanagare Bog SAC 000592; Bellanagare Bog SPA 004105; Callow Bog SAC 000595; Cloonchambers Bog SAC 000600; Cloonshanville Bog SAC 000614; Drumalough Bog SAC 002338; Lough Gara SPA 004048; Mullygollan Turlough SAC 000612 and Tullaghanrock Bog SAC 00235. An in combination assessment was also carried out and is to be found on the file. The overall conclusion was to screen out all Natura2000 sites concluding no possibility of a significant effect on any Natura site.

The licence was also referred for an archaeological assessment which indicated no objections but recommended an exclusion area around historical buildings on the site.

DAFM Licence Decision

The licence was issued on the 25th May 2020 for thinning of an area of 4.49 hectares subject to standard conditions with a specific condition relating to archaeology, condition (i), reflecting the recommendation outlined in the archaeological assessment.

Appeal

There is one appeal against the decision.

The grounds contend that the licence does not comply with the Habitats Directive, the Birds Directive and the and EIA Directive. Reference is made to a number of stated judgement / cases, EUCJ 323-17 and 254-19. It is submitted that in relation to the test for Appropriate Assessment there is no need to establish such an effect; it is, as Ireland observes, merely necessary to determine that there may be such an effect and that it is necessary to assess the cumulative effects of forestry on the area. It also references the Court of Justice stating that it has repeatedly held that the Member States' obligation arising from a directive to achieve the result envisaged by the Directive and their duty to take all appropriate measures, whether general or particular, to ensure fulfilment of that obligation is binding on all the authorities of Member States, including, for matters within their jurisdiction, the courts. The

obligation of a national court to interpret national law as far as possible in accordance with EU law does not require that the parties to the proceedings before it expressly assert that specific interpretation, if those parties allege at least an infringement of the relevant provisions of EU law. The grounds also set out that this must apply to the FAC as the obligation is binding on all the authorities of Member States.

In a statement to the FAC, in regard to the granted felling application TFL00153418 the DAFM indicated that the decision was issued in accordance with procedures, S.I. 191/2017 and the 2014 Forestry Act and set out that the Department is satisfied that all criteria as outlined in the following standards and procedures have been adhered to in making a decision on the application. The Statement from the Forestry Inspectorate indicates that the application was assessed using the relevant AA procedure applicable at the time. The proposal was screened out using the Habitat Table 18Dec19 and the Bird Foraging table 06Jan20. An in-combination assessment was carried out.

The FAC considered, in the first instance, whether 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 used. (Class I (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 proposal as described is for the thinning of 4.49 ha and is considerably sub-threshold for the mandatory submission of an EIA report.

The FAC concludes that the licence issued for the thinning of 4.49 ha, as part of a forestry operation and does not consent to a 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). As such there is no breach of the EIA Directive.

In considering the grounds of appeal in relation to Appropriate Assessment and related matters the FAC finds that the DAFM undertook an Appropriate Assessment screening that found nine European sites within 15km and that there was no need to expand this radius in this case. Other plans and projects were considered and are recorded. All nine sites considered (Bellanagare Bog SAC 000592; Bellanagare Bog SPA 004105; Callow Bog SAC 000595; Cloonchambers Bog SAC 000600; Cloonshanville Bog SAC 000614; Drumalough Bog SAC 002338; Lough Gara SPA 004048; Mullygollan Turlough SAC 000612 and Tullaghanrock Bog SAC 00235) were screened out and the reasons for the screening conclusions reached are provided. An In combination assessment was also carried out and is to be found on the file. The FAC examined publicly available information from the EPA and NPWS and identified the same nine sites

within 15km from the proposal. The FAC is satisfied that there was no requirement to extend the radius beyond the 15 km in this case given the scale, nature and location of the proposal.

The FAC is not satisfied that the DAFM made a serious or significant error in their Appropriate Assessment screening and concurs with the conclusions reached.

The inspector's determination was reviewed by the FAC and is considered adequately reasoned based on the responses received and the application details. Based on the information available to it and having regard to the scale, nature and location and the conditions under which operations would be undertaken, the FAC is not satisfied that the proposal poses a significant threat to water quality.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal, and submissions received. The FAC is not satisfied that a serious or significant error or a series of errors was made in making the decision and neither that the decision was made without complying with fair procedure. The FAC is thus affirming the decision of the Minister regarding licence TFL00153418 in line with Article 14B of the Agricultural Appeals Act 2001, as amended. 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,

A black rectangular redaction box covering the signature of the official.

Derek Daly On Behalf of the Forestry Appeals Committee