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8th April 2021

Subject: Appeal FAC 036/2020 in relation to licence TFL00348519

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) in relation to the above licence issued by the Department of Agriculture, Food and Marine (DAFM). 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

Licence TFL00348519 for thinning of 19.18 ha in three plots at Tinode, Blessington, Co. Wicklow was granted by the DAFM on 31st December 2019.

Hearing

An oral hearing of appeal FAC 036/2020, of which all parties were notified, was held by the FAC on the 10th March 2021. In attendance:

FAC Members:	Mr. John Evans (Deputy Chairperson), Mr. Vincent Upton, Mr. Seamus Neely & Mr. James Conway
Appellant:	[REDACTED]
Applicant / Representative(s):	[REDACTED]
Department Representative(s):	Mr. Robert Windle & Ms. Eilish Keogh
Secretary to the FAC:	Ms. Marie Dobbyn

Decision

Having regard to the evidence before it, including the record of the decision by the DAFM, the notice of appeal, and submissions received including at the oral hearing, the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister to grant this licence TFL00348519.

The licence relates to the thinning of forest and replanting on 19.18 ha in three plots at Tinode, Blessington, Co. Wicklow. The current stock is Sitka Spruce. Thinning will take place on the two larger plots, while felling and replanting is to take place on the smallest plot which is 0.31 ha in size. In this case the replanting will be of a beech/oak mix.

The underlying soil type is said to be predominately brown earths in nature, which is a well-drained mineral soil,, the slope is predominately flat to moderate (<15%), the project area is crossed by/adjoins an aquatic zone and the vegetation type in the proposal area comprises of conifer plantation (WD4).

Publicly available EPA mapping shows the site to be mostly in the Liffey_SC_020 sub catchment with a small portion in the Liffey_SC_070 sub catchment, both of which are in the Liffey and Dublin Bay_09 Catchment. The upper reaches of the Tinode stream (part of the Goldenhill_010 waterbody) adjoins plot 1, which flows to the Poulaphouca SPA which lies ca. 3.6km direct distance to the south. This is unclassified by the EPA for the purposes of the Water Framework Directive. Plot 3 is ca. 260m from the Hartwell Stream (part of the Rathmore Stream _10 waterbody). This was reported by the EPA as having a Poor ecological status under the 2013-2018 WFD monitoring cycle.

The licence Application pack is dated as received 14th May 2019. Referrals were made to Inland Fisheries Ireland (IFI), Wicklow County Council (12th June 2019), and NPWS (16th of December 2019). A response from NPWS drawing DAFM's attention to general points of relevance to forestry practice is on file dated the 9th of July 2019. There are no responses from IFI or Wicklow Co. Co. on file.

An Appropriate Assessment (AA) screening form is on file is on file dated the 25th of June 2019, that refers to a 3km separation distance to Natura sites. No such sites are found within that distance. There is a separate in-combination report on file showing searches carried out on the 13th of December 2019. The Inspector's certification is on file noting a Field and Desk assessment on the 11th of December 2019.

The certification also includes a screening for AA using 15Km as the search radius, and which notes a spatial run date of the 16th of December 2019. It notes 5 Natura sites:

1. Glenasmole Valley SAC [1209]
2. Poulaphouca Reservoir SPA [4063]
3. Red Bog, Kildare SAC [0397]
4. Wicklow Mountains SAC [2122]
5. Wicklow Mountains SPA [4040]

These are all screened out for the following reasons:

- The absence within and adjacent to the project area, of any habitat(s) listed as a qualifying interest of the Natura site. (Site 1,3 ,5 above)
- The unsuitability of the project area for use by any species listed as a qualifying interest of the Natura site. (Site 2,3,4 above)
- All sites also screened out on the basis of no cumulative or in combination effect.

The decision to grant the licence is subject to one appeal. The grounds submitted broadly are that the presence of Natura sites within 15km of the project site should have triggered a screening for Appropriate Assessment; that the inspector has not provided evidence as to the review of referral responses and submissions regarding the project and the AA Screening process (Q3 on the Inspector's certification); that the inspector has not provided evidence as to there being sufficient information

within the application and available from elsewhere to form a sound judgement as to whether or not the project is likely to have a significant effect on a Natura site (Q4 on the Inspector's certification); that the inspector has stated that the project is in a different catchment to a Natura site, but not stated what catchment that it is in; and that the safeguards published in the Forest Service guidelines, requirements and procedures are in fact measures intended to avoid or reduce the harmful effects of the plan or the project on that site. The following judgments and opinions are referred to in support of the grounds of appeal; the judgment in Case C-323/17, Commission notice "Managing Natura 2000 sites - The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC", C(2018) 7261 (21/11/2018) and Kelly v An Bord Pleanála & Others 2013 JR 25/07/2015 of Justice Finlay Geoghegan.

In a statement to the FAC (dated by the Inspector on the 9th of June 2020) in responding to the appeal, the DAFM submitted that their decision was issued in accordance with their procedures, Statutory Instrument 191/2017 and the 2014 Forestry Act, and the relevant AA procedure was applied in approving this licence. It was submitted that using the current AA procedure in conjunction with the Habitat & Foraging guidance tables all Natura 2000 sites have been screened out as outlined on file and that the application alone or in-combination with other forest and non-forest plans/projects in the area will not have a significant impact on the qualifying interests of the Natura 2000 sites screened as part of the AA.

At the oral hearing, DAFM summarised their approach to processing the application and issuing the licence, confirmed that no response was received from IFI or the local authority and clarified that the activities for Appropriate Assessment screening and in-combination assessment was completed before the licence issued. The DAFM submitted that the watercourse which adjoins plot 1 would not be crossed during the thinning operations, and that in any event, it is a condition of the license that the licensee shall ensure that all felling and planting operations are carried out in accordance with Forestry and Water Quality guidelines and the Code of Best Forest Practice – Ireland.

In addressing the Appropriate Assessment grounds of appeal, the FAC considered that, under Article 6(3) of the Habitats Directive, any 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 and projects, having regard to the conservation objectives of that designated site. In this case, the DAFM undertook two Stage 1 screenings, and when using a search radius of 15km found five European sites and that there was no reason to extend the zone of influence in this case. The sites identified are as listed above. The FAC consulted publicly available information from the NPWS and EPA and identified the same five sites. The DAFM considered each site in turn and listed the associated qualifying interests and conservation objectives and the reasons for their screening conclusions. The DAFM's reasons for screening out the different sites were site specific and included, variously, the absence within and adjacent to the project area of any habitat(s) listed as a qualifying interest of the Natura site, or the unsuitability of the project area for use by any species listed as a qualifying interest of the Natura site.

The DAFM undertook and recorded a consideration of other plans and projects, including forestry and non-forestry projects, and concluded that the 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 FAC considered all of the evidence before it and is not satisfied that the DAFM erred in their decision to screen out the five Natura sites for Appropriate Assessment. Furthermore, the FAC is not satisfied that a serious or significant error or series of errors were made in the making of the decision regarding Appropriate Assessment.

Regarding the grounds of appeal that the Inspector answered in the affirmative to Questions 3 & 4 in the Certification Report but did not provide any evidence as to why he did so, the FAC finds Question 3 refers to the review of all referrals and submissions in this case. Based on the evidence before it that no referrals were received from IFI and the relevant local authority, and that the response from NPWS was general in nature, and that in this case that the Appropriate Assessment screening was redone by DAFM focusing on a radius of 15km, the FAC finds this response adequate. Question 4 refers to the inspector having sufficient information to make a sound judgement on the likelihood of the project having a significant effect on a European site. Having reviewed the evidence before it, including the Appropriate Assessment screening and submissions made at oral hearing, the FAC is satisfied that the inspector had sufficient information before him to make his decision.

When considering the grounds that the safeguards published in the Forest Service guidelines, requirements and procedures are in fact measures intended to avoid or reduce the harmful effects of the plan or the project on that site, the FAC notes that these guidelines are general in nature and are not site specific being attached to all felling licences issued by the DAFM. The FAC is of the view that their inclusion in the licence is in line with good forestry practice generally and do not relate to any circumstances specific to the licence under appeal. Having regard to the nature, scale and location of the proposal and the licence conditions the FAC is satisfied that the proposal would not impact on any waterbody.

In considering the appeal the FAC had regard to the record of the decision, the submitted grounds of appeal and submissions received including at the oral hearing. The FAC is not satisfied that a serious or significant error or a series of errors was made in making the decision or that the decision was made without complying with fair procedure. The FAC in deciding to affirm the decision, 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 John Evans.

John Evans, On Behalf of the Forestry Appeals Committee