



An Coiste um Achomhairc
Foraoiseachta

Forestry Appeals Committee

09 April 2021

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[REDACTED]

FAC ref: 414/2020

Subject: Appeal in relation to felling licence TFL00480120

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine (DAFM) in respect of felling licence TFL00480120.

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 TFL00480120 was granted by the Department on 22 June 2020.

Hearing

An oral hearing of appeal 414/2020 was conducted by the FAC on 01 April 2021.

Attendees:

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| FAC Members: | Mr Des Johnson (Chairperson), Mr Dan Molloy, Mr Luke Sweetman and Mr Pat Coman |
| Secretary to the FAC: | Mr Michael Ryan |
| DAFM representatives: | Mr Eugene Curran and Ms Eilish Kehoe |

Decision

The Forestry Appeals Committee (FAC) considered all of the documentation on the file, including application details, processing of the application by DAFM, the grounds of appeal, submissions made at the Oral Hearing and all submissions/observations, before deciding to affirm the decision to grant the Licence (TFL00480120).

The proposal is for the felling and restocking of a stated site area of 0.4ha at Laharan, Co. Kerry. The project lands are in two plots located off the N70 Cahersiveen to Waterville Road. Plot 1 is 0.3ha containing Sitka spruce, and Plot 2 is 0.1ha containing Sitka Spruce. Plot 1 is bordered by a stream on

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the west side called the Oghermong stream which rises 4Km to the north east of the site, the stream flows a distance of 1.5 km in a southerly direction from the site where it flows into the sea. The Oghermong is joined by a number of other streams that all rise to the west and north west of plot 1. No stream runs through either site. The harvest year is stated to be 2020. Soils are predominantly podzols in nature and the slope predominantly flat to moderate. Proposed restocking would be with broadleaves.

The DAFM referred the application to Inland Fisheries Ireland (IFI), National Parks and Wildlife Service (NPWS), and Kerry County Council. There are no replies recorded.

The DAFM carried out screening for Appropriate Assessment in accordance with the provisions of Article 6(3) of the Habitats Directive. The following five sites were screened out for Stage 2 Appropriate Assessment – Ballinskelligs Bay Inny Estuary SAC, Iveragh Peninsula SPA, Killarney National Park SAC, Puffin Island SPA and Valentia Harbour/Portmagee Channel SAC. Reasons for the screening conclusions are given as location of the project area within a separate waterbody catchment, the absence of any significant relevant watercourse within or adjoining the project area, and mandatory adherence to standard safeguards integral to the project. In-combination projects considered include dwellings, domestic extension, slatted shed, retail extensions, boat shed, micro distillery, quarry and domestic treatment plant. Recent forestry related projects include forest roads (1), private felling (1) and Coillte felling (4). It is concluded that there is no pathway for any significant effect on any Natura 2000 site listed, arising from the proposed development.

The licence issued on 22.06.2020. It is subject to standard conditions plus a requirement to harvest in dry weather only, and strict adherence to Standards for Felling and Reforestation, October 2019.

There is a single appeal against the decision to grant the licence. The grounds of appeal contend that the decision does not comply with the Habitats, Birds or EIA Directives, there is no need to establish a significant effect to trigger Appropriate Assessment - it is merely necessary to determine that there may be a significant effect (*Kelly v An Bord Pleanála*). The Appropriate Assessment screening shows that there may be such an effect. If the development is within 15km radius of a Natura 2000 site, it is screened in for Appropriate Assessment. It is not appropriate at screening stage to take account of measures intended to avoid or reduce the harmful effects on a European site. Assessments cannot have lacunae, and must contain complete, precise and definitive findings capable of removing all scientific doubt as the effects of the proposed development on a Natura 2000 site. Where a waterbody is concerned, it is necessary to examine the catchment map and state which catchment the proposed development is in. A map showing the SACs and SPAs should be submitted.

It is necessary to give details of all forestry activities in the area to determine if relevant thresholds have been reached. The FAC, as a public authority, is required to carry out screening for EIA and Appropriate Assessment.

In response, the DAFM state that relevant Appropriate Assessments procedures were applied at the time. Natura 2000 sites within a 15km radius were assessed. Habitat and Foraging Tables were used in the screening process. All information/results are on the public file. There is no direct hydrological connection from the project lands to any Natura 2000 site.



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An Oral Hearing was convened on 01.04.2021 and all parties were notified and invited to attend. The FAC sat remotely. The DAFM participated electronically. The applicant and the appellant did not participate. The DAFM detailed the procedures followed leading to the decision to grant the licence. Restocking would be with broadleaves. The project lands are in two plots. At the eastern end of the larger block there is a small drain with silt traps. This plot is separated from a stream flowing westwards by a minor public road. The licence is limited to two years for safety reasons as part of the site appears to suffer windblow. The volume of timber produced would be very small and could be extracted by tractor in dry weather. It is questionable if a licence is required under the Forestry Act 2014 for the southern plot, which appears to be a coniferous hedgerow or windbreak, if the wood produced is for the applicant's personal use.

Addressing the written grounds of appeal, the FAC noted that the proposed development involving felling and restocking, with no change of land use, is not a class of development covered by the EIA Directive. In terms of the requirements of the Habitats Directive, the FAC noted that the DAFM had carried out a screening for Appropriate Assessment, considering Natura 2000 sites within a 15km radius. The FAC saw no need to expand this radius in this case. The FAC noted that the DAFM had screened 5 designated sites assessing the potential of the proposed development to give rise to significant effects, on its own or in-combination with other plans or projects, and that all sites had been screened out for Stage 2 Appropriate Assessment with reasons given. The FAC considers that there is no convincing evidence that screening procedures had included consideration of measures designed to avoid or reduce significant effects on any Natura 2000 site. The FAC noted that there is no hydrological connection from the project lands to any Natura 2000 site. The northern and larger plot is sited close to a stream (the Boola) but is separated from it by a public road. This stream enters Valentia Harbour/Portmagee Channel SAC at c. 1443m. The qualifying interests for this SAC are mudflats and sandflats, shallow inlets and bays and reefs. Based on the information before it, the FAC finds no reason to consider that any significant or serious error occurred in the screening exercise for Appropriate assessment carried out by the DAFM, or to conclude that the conclusions reached are not sound.

The site lies within the Boola_SC_010 Sub-Catchment. Having regard to the nature and scale of the proposed development, and to the terms of the licence issued, the FAC considers that there is no likelihood of adverse impacts on water quality arising, with no likely impact on the Sub-Catchment.

In deciding to affirm the decision to grant the licence, the FAC considered that the proposed development is consistent with Government Policy and Good Forestry practice.

Yours Sincerely,

Pat Coman, on behalf of the FAC

