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13<sup>th</sup> April 2021

**Subject:** Appeal FAC318/2020 regarding licence WX07-FL0027

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 WX-FL0027 is for the felling of 13.01 ha at Clonmore Lower, Oulartleigh, Co. Wexford which was approved by the Department of Agriculture, Food and the Marine (DAFM) on the 12<sup>th</sup> June 2020.

#### **Hearing**

An oral hearing of appeal FAC318/2020 was held by the FAC on 22nd January 2021.

In attendance:

FAC Members: Mr. Donal Maguire (Chairperson), Mr. Derek Daly, Ms. Mary Lawlor, Mr. Vincent Upton

Secretary to the FAC: Ms. Marie Dobbyn

Appellant: [REDACTED]

Applicant's Representatives: [REDACTED]

DAFM Representatives: Mr. Anthony Dunbar, Ms. Eilish Kehoe.

#### **Decision**

Having regard to the evidence before it, including the record of the decision by the DAFM, the notice of appeal, submissions received including at the oral hearing, and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister regarding licence WX07-FL0027.

The licence pertains to the felling of 13.01 hectares of woodland at Clonmore Lower, Oulartleigh, Co. Wexford. The site is described as having a slope which is predominantly moderate 0-15%. The underlying soil type is approximately surface water gleys (shallow) and ground water gleys, (shallow) (38%), surface water gleys, ground water gleys (8%) and variable (54%). The application included a harvest plan, including maps, and general environmental and site safety rules related to the operations.

An appropriate assessment pre-screening report was provided with the application and recorded on the file.

The DAFM undertook screening considered six sites within 15km; 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 Kilmuckridge-Tinnaberna Sandhills SAC (001741); Raven Point Nature Reserve SAC (000710); Screen Hills SAC (000708); Slaney River Valley SAC (000781); The Raven SPA (004019) and Wexford Harbour and Slobbs SPA (004076). All of the sites were screened out based on a hydrological review of site characteristics including a hydrological distance, the absence of hydrological connection and separation distance. An in-combination assessment of possible In-Combination Effects was also carried out. The proposal was referred to Wexford County Council who did not raise any objections.

The licence was issued on the 12<sup>th</sup> June 2020 with conditions.

There is one appeal against the decision.

The grounds contend that the licence was issued in breach of Articles 2(1), 4(3) and 4(4) of the EU EIA Directive. In particular, it is submitted that the DAFM did not have regard to the criteria in Annex II of the Directive; that the DAFM, as the competent authority, has failed to carry out screening to determine the requirement for EIA and the application has not described all aspects of the environment which are likely to be significantly affected. It is also stated that this Licence and its associated operations threaten the achievement of the objectives set for the underlining waterbody or waterbodies under the River Basin Management Plan for Ireland 2018- 21. The Stage 1 conclusion is not considered legally valid as it relies on the applicant's pre screening.

The grounds also consider that there is inadequate conditions for the protection of listed birds consistent with the requirements of the Birds Directive, inadequate conditions in relation to notification of commencement operations and in relation to the spraying of chemicals.

In a statement to the FAC, that in regard to the granted licence for the proposed felling under WX07-FL0027 the DAFM indicated that the decision was issued in accordance with procedures, S.I. 191/2017 and the 2014 Forestry Act and 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. They submit that they followed the current DAFM AA Screening guidance document and considered Natura 2000 sites within 15km. in this regard, the qualifying interests of the Natura 2000 sites in question by using the latest information available and subsequently all Natura 2000 sites were assessed and screened out. It was also indicated that the site was the subject of a desk assessment and having considered the information gathered and assessed including in-combination it was recommended that this licence proceed.

An oral hearing was held of which all parties were notified and representatives of the DAFM and the Applicant attended. The DAFM presented an overview of their processing of the licence; the screening



assessment as undertaken; that hydrological connections were examined; that no hydrological connection exists and there was no possibility of a negative impact on any receiving waters.

The Applicant's representatives described the documents and information provided with the application. The Applicant at the hearing submitted that the site and proposed route was the subject of a desk assessment and that the nearest hydrogeological connectivity arising in relation to the site to a Natura site was over 18 kilometres. Practice in relation to chemical spraying employed by the applicant was also indicated.

In considering the appeal the FAC examined the appropriate assessment undertaken by the DAFM including the initial screening. The FAC examined publicly available information from the EPA and NPWS and identified the same six sites as the DAFM within 15km from the proposal. These are Kilmuckridge-Tinnaberna Sandhills SAC (001741); Raven Point Nature Reserve SAC (000710); Screen Hills SAC (000708); Slaney River Valley SAC (000781); The Raven SPA (004019) and Wexford Harbour and Slobbs SPA (004076). The FAC is satisfied that there is no requirement to extend this radius in this case given the scale, nature and location of the proposal.

The DAFM considered each site in turn and provided the reasons for screening out for appropriate assessment. An assessment of possible in combination was also carried out in relation to details of other plans and projects.

The FAC is satisfied that the DAFM did not make any serious or significant error in their appropriate assessment screening and concurs with the conclusions reached.

At the hearing the FAC raised issues relating to the details and clarification in relation to AA screening carried out, the in-combination; hydrogeological connectivity including the status of the stream on the eastern boundary, tree preservation orders; the response of the local authority and mitigation measures which were addressed by DAFM and the applicant to the satisfaction of the FAC.

During the oral hearing, the DAFM submitted that the Applicant had provided an additional Appropriate Assessment pre-screening report (dated 10<sup>th</sup> June 2020) and also that a response from Wexford County Council was received which had not been provided to the Appellant. These documents were subsequently provided to the Appellant by the FAC who was invited to make a reply. A reply was received by the FAC on 10<sup>th</sup> February 2021 which commented on the content of the pre-screening report and the connection with the Slaney River Valley SAC (000781).

The inspector's determination and recommendation was also reviewed by the FAC at the hearing and is considered adequately reasoned based on the responses received and the application details.

In relation to the EU EIA Directive, the Directive sets out in Annex II 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. 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 DAFM considered the application across a range of criteria, including water, designated areas, landscape and cumulative effects and determined that the project was required to undergo the EIA process. The proposal as described is being for clearfell of 13.01 hectares of woodland in a commercial forest managed for timber production which is considerably sub-threshold for the mandatory submission of an EIAR. Having regard to the record of the decision and the submitted grounds and the nature, scale and location of the proposal the FAC is satisfied that the proposal would not result in any likelihood of significant effects on the environment and that the DAFM did not err in its decision made regarding EIAR.

In relation to hydrological connections the FAC is satisfied based on the information available to it, in relation to Natura sites and qualifying interests that due to hydrological separation distance and/or the absence of a hydrological connection there is no possibility of a negative impact on any receiving waters.

Regarding the protection of birds and animal species, no evidence of their presence on the site or impacts on these species were provided. The qualifying interests are in coastal locations or where is no defined hydrogeological connection or proximity to the site. The conditions of the licence provide for mitigation measures in particular in relation to water quality and aquatic zones and that there are standards in relation to the spraying and use of pesticides and chemicals to achieve good forestry practice. It is also noted that the FAC does not consider that the issuing of the licence does not exempt the holder from meeting any legal requirements set out in any other statute. The FAC therefore considers and is satisfied that no issues arise to constitute errors in the making of the decision regarding licence WX07-FL0027.

In considering the appeal the FAC had regard to the record of the decision and 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 is thus affirming the decision of the Minister regarding licence WX07-FL0027 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,

  
Derek Daly On Behalf of the Forestry Appeals Committee