



An Coiste um Achomhairc
Foraoiseachta

Forestry Appeals Committee

26 April 2021

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FAC ref: 611/20

Subject: Appeal in relation to felling licence TFL00433719

Dear [REDACTED]

I refer to the appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine (DAFM) in respect of licence TFL00433719.

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 TFL00433719 was granted by the DAFM on 31 July 2020.

Hearing

An oral hearing of appeal 611/20 was conducted by the FAC on 13 April 2021.

Attendees:

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

Secretary to the FAC: Mr Michael Ryan

DAFM representatives: Mr Seppi Hona & Ms Eilish Kehoe

Decision

The 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 other submissions before deciding to affirm the decision to grant this licence (Reference TFL00433719).

The proposal comprises 5.04 ha of clear-felling of Sitka spruce 90% and Lodgepole pine (North Coastal) 10%, in one plot, and replanting with 85% Sitka spruce and 15% Additional Broadleaves at Rathgoonaun, Co Sligo.

The application was desk assessed by the DAFM. The predominant soil type is described as highly modified peat and peaty podzols in nature, slope is flat to moderate, site does not contain or adjoin

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an aquatic zone. Certification states 10.04 ha for felling/thinning within a 500m radius in the past 3 years and that 2.32% of the area within 5km radius is licensed for felling / thinning.

There were referrals to Inland Fisheries Ireland (IFI), the National Parks and Wildlife Services (NPWS) and to Sligo County Council, and there was internal referral to the DAFM Archaeologist. IFI responded and requested the use of silt control measures, silt traps, that no machinery would cross watercourses or enter any aquatic zone, there would be no felling in extreme rainfall or when ground is saturated, set out regards the disposal of material. Sligo County Council replied regards water quality, the public road infrastructure, requested the use of half loads and that the applicant/contractor would liaise with the Area Engineer. The NPWS replied that they had no comment to make. The DAFM Archaeologist responded that the nearest monument is an enclosure at c. 40m with intervening farm road and pasture field and had no recommendations to make regards the felling licence.

The DAFM Inspector carried out an Appropriate Assessment (AA) screening with reference to the provisions of Article 6(3) of the Habitats Directive, identifying the following Natura 2000 sites within a 15km radius of the project lands: Aughris Head SPA / Killala Bay – Moy Estuary SAC / Killala Bay – Moy Estuary SPA / Knockalongy and Knockachree Cliffs SAC / Lough Hoe Bog SAC / Lough Nabrickkeagh Bog SAC / Ox Mountains Bogs SAC / River Moy SAC / Unshin River SAC. All the Natura 2000 sites were screened out for Stage 2 AA for reasons of an absence of aquatic zones, the absence of any significant relevant watercourses within or adjoining the project area, and regards the SPAs the unsuitability of the proposal area for use by any of the species listed as qualifying interests for the Natura sites, and other factors – distance as per foraging tables.

The DAFM also carried out an in-combination assessment (done week of 13 July 2020), the assessment identified 11 Local Authority planning permissions, 6 afforestation projects (2015 to 2019), 2 forest road projects – one with no data, 4 private felling licences one of which was cancelled, and 1 Coillte felling licence. The assessment outlined that the project lies in the rural landscape of Rathgoonaun, Farranmacfarrell, Crowagh or Dunneill Mountain County Sligo. The proposal is within the River sub-basins Carrownrush_010 and Buncrowey_010 which have forest cover of 10% and 22% respectively. The report concluded that this project when considered in-combination with other plans or projects will not give rise to the possibility of an effect on any of the Natura sites listed above. Overall conclusion was to screen out and no Stage 2 AA required.

The licence was issued with relatively standard conditions as well as the following additional conditions;

- (h) applicant should consider replanting with pure Lodgepole pine due to the poor quality of the current crop
- (i) access shall be via L6706 39-(51) and L27020-(53). Half loads onto local road and onto N59. Liaise with Sligo County Council prior to commencement of operations.
- (j) strictly adhere to the Standards for Felling and Reforestation October 2019. These standards replace the existing Forest Harvesting & the Environment Guidelines 2000.

There is one appeal against the decision to award the licence TFL00433719 and the following briefly sets out the grounds raised;



- Before granting the licence, the Minister must establish the legitimacy of the existing forest. It is now necessary for the FAC to do this.
- By requesting further information from the DAFM, the FAC has upheld the appeal. Incomplete applications should be returned to the Forestry Service.
- No reliance should be placed on the fact that NPWS did not make a specific response.
- The appellant was refused access to the iFORIS database and was hindered in making his appeal
- The decision does not comply with the Habitats, Birds or EIA Directives or basic guidelines of the NPWS
- There is no need to establish a significant effect to trigger AA, it is merely necessary to determine that there may be a significant effect (Kelly v An Bord Pleanála). The AA screening shows that there may be such an effect.
- If the development is within 15km of a Natura 2000 site, it has been screened in for AA
- It is not appropriate at screening stage to take account of measures intended to avoid or reduce the harmful effects on a European site
- The assessment carried out in accordance with the provisions of the Habitats Directive must not have lacunae and must be capable of dispensing with all reasonable scientific doubt as to the effects on a Natura 2000 site
- The catchment the proposed development is in should be stated
- There should be a map showing all SACs and SPAs relevant
- Details of all forestry in the area should be stated
- It is the duty of the FAC to carry out a full screening for AA and EIA.

The DAFM responded to the appeal stating that the relevant AA procedure was applied in approving this licence. The screening information can be found on file. An in-combination assessment was also carried out for this application and can also be found on file. 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. This 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.

The FAC held an Oral Hearing on 13 April 2021. The parties were invited to attend in person or to join remotely. The applicant and the appellant did not participate. The DAFM representatives participated remotely. The FAC sat remotely at this hearing. At the hearing the DAFM described the processes involved in considering the application, that there were referrals made to the IFI owing to being within a fisheries sensitive area, to Sligo County Council and to the NPWS, and each replied. The DAFM confirmed the application was desk inspected using the application documents, the harvest plan, the application maps, and the iFORIS GIS layers. The proposal was the subject of an AA screening in respect of Natura Sites within a 15km radius, on its own and in-combination with other plans or projects, with all sites screened out for Stage 2 AA prior to the decision to grant the licence. The DAFM Inspector explained there were additional conditions applied to reflect the submission from the Local Authority. Also, the use of Lodgepole pine is a recommendation and not a

requirement, this is inserted even though the proposed cropping is technically in order. The current crop had not grown well (planted in 1992) and the option for Lodgepole pine is submitted on the licence for the applicant to consider. The DAFM explained that the site could have developed in respect of fertility and drainage and the replanting could perform better as a result. The DAFM considered there would be no risk of colonisation to bog land across the public road to the south of the proposal. Regards the Birds Directive the DAFM stated the DAFM's requirements provide protection and the licence holder must comply with them. Regards the Local Authority's request that a 'competent technical professional' closely supervise the clearfelling operations, the DAFM stated there was no legal requirement that a professional forester supervise a felling operation, instead the licence conditions must be complied with. Regards the IFI request that there be no felling activity when soils are saturated or during extreme rainfall events, the DAFM stated that the applicant or his contractor has to make that judgement call – it is reliant on the professional training received by the contractor. Regards archaeology the DAFM stated there is no recorded monument on the site or in sufficiently close proximity to the site to have any effect, this was clarified with the DAFM's Archaeologist prior to the licence decision, who replied 'the nearest recorded monument / SMR site – enclosure (SL 018 052) is some 40m plus distance to the north with an intervening laneway and pasture fields'. The DAFM stated there was an error in the Archaeologist's reply in referring to a forest road, but the reply contained the correct felling licence reference as distinct from a forest road number.

In addressing the grounds of appeal, the FAC considered, in the first instance, the contention that 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 use". (Class 1 (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 FAC concludes that the felling and subsequent replanting, as part of a forestry operation, with no 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). The FAC considers the licence issued is for the felling and reforestation of 5.04 ha and does not consent to any change of land use. The FAC is satisfied the completion of the EIA questionnaire on IFORIS in this instance does not affect the foregoing. The IFI response stated that the proposal is within the Buncrowey River catchment which provides salmon and trout spawning and nursery habitat for the Easky River system, and that this catchment is under pressure and has been allocated moderate ecological status in the River Basin Management Plan, this status must be improved to good to comply with the Water Framework Directive. The Buncrowey River is c. 180m to the southwest and flows to the coast without entering or meeting any nationally or European designated sites. The Lecarrow Stream is c. 100m east of the proposal and flows north to the Carrownrush River which also goes to the coast without entering or meeting any nationally or European designated sites. Based on the evidence before the FAC the proposal site contains no



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aquatic zones or relevant watercourses and the felling and planting, per licence condition (a), is subject to the Forestry and Water Quality Guidelines. As such, having regard to the nature and scale of the proposal, the absence of aquatic zones and the separation distances, the FAC concluded that the proposal would not have any impact on water quality. In addition the FAC concluded there is no breach of the provisions of the EIA Directive in the decision to grant the licence.

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 or projects, having regard to the conservation objectives of that designated site. In this case, the DAFM undertook a Stage 1 screening in relation to 9 Natura 2000 sites as evidenced on the IFORIS certification pages with all European sites screened out for Stage 2 AA and an in-combination screening is also evidenced as compiled week commencing 13 July 2020, and for each site the DAFM concluded *"AA Screening has been carried out in accordance with S.I.477 of 2011 (as amended) and S.I.191 of 2017 (as amended). The project is not directly connected with or necessary to the management of any European Site. Furthermore, DAFM has determined that there is no likelihood of the project having any significant effect, either individually or in combination with other plans and projects, on this European site"*. The FAC notes the most proximate of the European sites is the Ox Mountain Bogs SAC at c. 1.7 km south of the proposal and while sharing the Sligo Bay Catchment and the Easky_SC_010 sub-catchment, has no direct hydrological connection to the proposal which is also sufficiently distant to allay any possibility of any effect arising.

Regards the contention the licence is contrary to the Birds Directive. No specific evidence has been submitted in respect of the presence of Annex IV species or other bird species, or reasons why the proposed development would threaten their protection. In these circumstances, the FAC concludes there is no related reason on which to affect the decision.

In the circumstances outlined above, and based on the evidence before it, the FAC concluded that the DAFM did not make a serious or significant error or series of errors in their decision to issue licence TFL00433719 and did so in compliance with fair procedures. In deciding to affirm the decision to grant the licence, the FAC considered that the proposed development would be consistent with Government policy and good forestry practice.

Yours Sincerely

Pat Coman, on behalf of the FAC

