



An Coiste um Achomhairc
Foraoiseachta

Forestry Appeals Committee

20 January 2021

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FAC ref: 567/2020

Subject: Appeal in relation to felling licence KY15 FL0029

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Minister for Agriculture, Food and Marine in respect of licence KY15 FL0029.

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 KY15 FL0029 was granted by the Department of Agriculture, Food and Marine (DAFM) on 17 July 2020.

Hearing

A hearing of appeal 567/2020 was conducted by the FAC on 22 December 2020.

FAC: Mr Des Johnson (Chairperson), Mr Vincent Upton, Mr James Conway
& Mr Pat Coman

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 other submissions, before deciding to affirm the decision to grant this licence (Reference KY15 FL0029).

The proposal is for the clear-felling and replanting of 12.64 ha at Glashacormick, Co Kerry. Project site comprises 12.64 ha of clear-felling of 100% Sitka Spruce and replanting with 100% Sitka Spruce at Glashacormick, Co Kerry. Application sought 0.63 ha of open space. Site is between 280 and 300m elevation with fall to north and the Flesk (Kerry) River which is c. 100m distance north of the proposal. Underlying soil type is given as approximately Blanket Peats (100%) The slope is predominantly

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moderate 0-15%. There are no evident watercourses on site. The project is located in the Laune Maine Dingle Bay catchment (100%), the Flesk [Kerry]_Sc_010 (100%) Sub-Catchment, and within the Flesk (Kerry)_020 (100%) Waterbody, is not within a Freshwater Pearl Mussel catchment, and is proximate to the Killarney National Park, Macgillicuddy's Reeks & Caragh River Catchment SAC.

The application was the subject of desk assessment by the DAFM and a referral to Kerry County Council to which no response is evidenced. In processing the application the Department completed a Stage 1 screening for Appropriate Assessment (AA) and looked at Natura 2000 sites within a 15km radius of the proposal and screened out the following European sites either for reasons of separation distance or lack of pathway; Blackwater River (Cork/Waterford) SAC, Mullaghanish to Musheramore Mountains SPA, Mullaghanish Bog SAC, St. Gobnet's Wood SAC, and the Old Domestic Building - Curraglass Wood SAC. The following European site was screened in for AA; Killarney National Park, Macgillicuddy's Reeks & Caragh River Catchment SAC. An AA Report and an AA Determination, were completed and were reviewed by external ecologist, and mitigations were determined.

Licence issued 17 July 2020 for felling and replanting of 12.64 ha, valid to 31 December 2022, and is subject to what are relatively standard conditions (a) to (g) and the additional conditions (h) to (k), these are set out in full on the licence with reasons.

There is one appeal against the decision to grant the licence. The grounds of appeal include that the AA screening does not comply with *Finlay J in Kelly*, the decision is invalid as the Minister is being judge in his/her case, there have been no investigations as to whether the application site has complied with the requirements of EU law. An issue raised regard the FAC in the appeal is not a valid ground of appeal against a decision to issue a felling licence.

In response to the grounds of appeal the DAFM stated the 12.64 ha felling and reforestation project has been subject to AA Screening for European sites within 15 km from the project. The DAFM identified the possibility of the project having a significant effect on a screened European site (Killarney National Park, Macgillicuddy's Reeks & Caragh River Catchment SAC) was identified on a precautionary basis and an AA was carried out. The measures described in the application documentation, together with adherence to relevant environmental guidelines/requirements /standards and to the site-specific mitigation measures set in the AA Report and AA Determination statement ensure that the proposed felling and reforestation project will not result in any adverse effect on any European Site. The potential for the proposed project to contribute to an in-combination impact on the Killarney National Park, Macgillicuddy's Reeks & Caragh River Catchment SAC was also considered by the DAFM. The DAFM concluded that the identified potential pathways for any adverse effect are robustly blocked using avoidance, appropriate design and the implementation of best practice, and through the mitigation as set out within the AA Report and AA Determination. The DAFM stated that pursuant to Regulation 42(16) of the European Communities (Birds and Natural Habitats) Regulation 2011 (as amended) and based on objective information, that the project either individually or in-combination with other plans or projects, will not adversely affect the integrity of any European site. The site-specific mitigations identified in the AA Report and AA Determination were attached as conditions of the licence.

The EU Directive sets out a list of projects in Annex I 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 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). As such, the FAC concluded that there is no breach of any of the provisions of the EIA Directive.

The FAC considered the Appropriate Assessment screening, the AA Report and AA Determination in this instance. The FAC considered that the procedures adopted in these were consistent with the requirements of Article 6(3) of the Habitats Directive and that the reasoning and the conclusions reached were sound. The FAC noted that the recommended mitigations, as contained in the AA Determination, had been incorporated into the licence granted as conditions. The FAC concluded that the proposed development, carried out in accordance with the mitigation measures recommended in the Determination and attached to the licence as conditions (h) (i) and (j), would not adversely affect the integrity of the Killarney National Park, Macgillycuddy's Reeks & Caragh River Catchment SAC Natura 2000 site, having regard to the conservation objectives, and would not affect the preservation of the site at favourable conservation status.

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