



An Coiste um Achomhairc
Foraoiseachta

Forestry Appeals Committee

22 January 2021

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FAC ref: 582/2020

Subject: Appeal in relation to licence WW01-FL0098

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 WW01-FL0098.

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 WW01-FL0098 was granted by the Department of Agriculture, Food and Marine (DAFM) on 17 July 2020.

Hearing

A hearing of appeal 582/2020 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 and the grounds of appeal, before deciding to affirm the decision to grant this licence (Reference WW01-FL0098).

The proposal is for the clear-felling and restocking of a stated site area of 8.45ha at Ballyfoyle, Co. Wicklow. The project lands are in 2 plots (1.80ha and 6.65ha). Existing trees are predominantly Sitka Spruce and were planted at intervals between 1960 and 1983. Restocking would be 98% Sitka Spruce and 2% Rowan, and 1.22ha of open space is provided for. A document titled 'harvest plan' and an Appropriate Assessment Pre-screening Report were submitted with the application. The project lands form part of a larger forest area and adjoin a public road to the north-west. Soils are stated to be 100%

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Podzols (Peaty), Lithosols, Peats, and the slope is stated to be predominantly moderate. The project lands are within the catchment Liffey 09_01 and Liffey _SC_010 (100%).

The DAFM referred the application to Wicklow County Council and Inland Fisheries Ireland (IFI). The County Council did not raise any specific objections and IFI requested that all works should be carried out in accordance with Forestry Harvesting and Environmental Guidelines, a 10m buffer be created along all watercourses, sedimentation traps be constructed in advance of felling, and IFI personnel be informed.

The DAFM carried out Appropriate Assessment screening on Natura 2000 sites within a 15km radius. Poulaphouca Reservoir SPA, Wicklow Mountains SAC, Red Bog, Kildare SAC and Glenasmole Valley SAC were assessed before being screened out for Appropriate Assessment for reasons relating to *separation distance, absence of direct hydrological connection, insensitivity of the qualifying interests* and lack of pathway for the transmission of effects. Wicklow Mountains SPA was assessed and screened in for Stage 2 Appropriate Assessment due to proximity to the project lands. The DAFM proceeded to prepare an Appropriate Assessment Report leading to a Determination. In respect of the Wicklow Mountains SPA, the Stage 2 Appropriate Assessment is carried out listing the qualifying interests (Merlin and Peregrine) and conservation objectives and assessing the potential for adverse impacts on these interests – direct and indirect, short term and long term, and operational. The report recommends mitigation measures in respect of the Merlin and Peregrine. In-combination effects are considered, listing a series of planning permissions (predominantly dwellings) and other forestry projects – 4 afforestation, 1 forestry road, 5 private felling and 21 Coillte felling licences. The DAFM made an Appropriate Assessment Determination on 24 June 2020 and this was reviewed on 13 July 2020 by an external ecologist. This determined that, based on the best scientific knowledge in the field, the proposed activity individually or in combination with other plans or projects, will not adversely affect the integrity of any European sites, in particular the Wicklow Mountains SPA, *having regard to their conservation objectives, and will not affect the preservation of these sites at favourable conservation status, if carried out in accordance with specified mitigation measures.* It is further determined that, based on objective information, no reasonable scientific doubt remains as to the absence of adverse effects on any European site. In respect of the mitigation measures recommended, in summary these relate to the following:

Merlin:-

- No forestry operations during the period 1 March – 31 August inclusive, within 100m of the forest edge, where such forest edge is immediately adjacent to moors, heathland, peat bogs or natural grassland, or within 100m of a clearing in the forest of greater than 1ha.
- Operations can commence in sections of the project area furthest away from the 100m exclusion zone. Operators can only enter the exclusion zone during the period 1 September to 29 February inclusive

Peregrine:-

- Retain existing scrub on site, to maximise opportunities for prey species.

Other measures recommended include for the protection of water quality and the environment:-



- Adherence to all water protection measures relating to exclusion zones, silt and sediment control, cultivation, fertilisation, herbicide application, location of site storage depots and disposal of waste as set out in the Standards for Felling and Reforestation. Adherence to Interim Standards for Felling and Reforestation and Environmental Regulations for Afforestation, Forestry and Otter Guidelines.
- Apply and demonstrate sediment trapping measures at appropriate intervals. Geotextiles to be installed in new and existing drains. Silt traps to be staggered.

The licence issued on 17 July 2020 and is exercisable until 31 December 2022. It is subject to standard conditions plus additional conditions relating to the restriction on operations from 1 March to 31 August, retention of scrub on site, protection of water quality, protection of the environment and adherence to specified Regulations, Guidelines and policies.

There is a single appeal against the decision to grant the licence. The grounds contend that the Appropriate Assessment does not comply with the Court judgment *Finlay J. in Kelly*, the decision is invalid as the Minister is being judge in his/her own case, there was no investigation as to whether the application site complied with the requirements of EU law, and the Minister has assumed control of the Forestry Appeals Committee. Basic requirements of the NPWS have not been complied with.

In response, the DAFM state that the proposal was subject to Appropriate Assessment screening procedures (Nov. 2019) and, applying the Precautionary Principle, the possibility of significant effect was identified for Wicklow Mountains SPA. A Stage 2 Appropriate Assessment was carried out and site-specific measures prescribed to mitigate potential impacts. There would be no adverse effect on any European site. In-combination impacts were considered. Specified mitigation measures were included in the licence by way of conditions. A number of qualifying interests were truncated on the Appropriate Assessment screening Form when outputting, but all qualifying interests and conservation objectives were considered during the screening exercise.

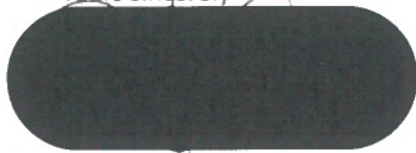
In regard to the grounds of appeal, the FAC considers that these do not refer to any specific significant or serious error in the procedures followed by the DAFM in the Appropriate Assessment screening, the Appropriate Assessment Report or the Appropriate Assessment Determination. Having considered the DAFM Appropriate Assessment screening and, in particular, the reasoning and conclusions reached for screening out the Poulaphouca Reservoir SPA, Wicklow Mountains SAC, Red Bog, Kildare SAC, and Glenasmole Valley SAC, the FAC is satisfied that none of the conditions attached to the licence are mitigation measures in respect of any of these listed Natura 2000 sites, having regard to their qualifying interests and conservation objectives. The licence does include conditions requiring mitigation in respect of the Wicklow Mountains SPA, and these reflect the recommendations contained in the Appropriate Assessment Report. The Appropriate Assessment Determination is based on adherence to the recommended mitigation measures for the Wicklow Mountains SPA and these are attached to the licence issued by way of conditions. Based on the information before it, the FAC concludes that there is no convincing evidence of any significant or serious error in the procedures adopted by the DAFM. The FAC concludes that the proposed development individually, or in combination with other plans or projects, would not be likely to have a significant effect on Poulaphouca Reservoir SPA, Wicklow Mountains SAC, Red Bog, Kildare SAC or Glenasmole Valley SAC,

having regard to their qualifying interests and conservation objectives. Furthermore, the FAC concludes that the proposed development individually, or in combination with other plans or projects, would not adversely affect the integrity of the Wicklow Mountains SPA, having regard to its conservation objectives, and would not affect the preservation of this site at favourable conservation status, carried out in accordance with specified mitigation measures attached as conditions to the licence issued.

The proposed clear-felling and reforestation do not fall within a class of development covered by the EIA Directive. Having regard to the nature and scale of the proposal, and to the characteristics of the surrounding area, the FAC considers that there is no real likelihood of the proposed development giving rise to significant detrimental effects on the environment.

In deciding to affirm the decision to grant the licence, the FAC concluded that the proposed development would be consistent with Government Policy and Good Forestry Practice.

Yours Sincerely

A large, solid black oval redaction box covering the signature of Pat Coman.

Pat Coman, on behalf of the FAC