



[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

21 January 2021

Subject: Appeal FAC268/2020 regarding licence WWO8-FLO188

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 WWO8-FLO188. 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

Tree Felling licence WWO8-FLO188 was granted by the Department on 22 May 2020.

Hearing

A hearing of appeal 268/2020 was conducted by the FAC on 13 November 2020.

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

Decision

The Forestry Appeals Committee considered all of the documentation on the file, including application details, processing of the application by DAFM, and the grounds of appeal and has decided to affirm the decision of the Minister regarding licence WWO8-FLO188.

The proposal is for the clear-felling and replanting of an area of mostly coniferous trees in the townland of Ballymaghroe in Co. Wicklow. The site area is indicated to be 3.14 hectares. The trees to be felled are Sitka spruce apart from a small area of 0.38 hectares of Douglas fir. The application indicates that the lands would be replanted with 98% Sitka spruce and 2% Oak. An open space area of 0.16 hectares is indicated in the restocking table. The applicant submitted an Appropriate Assessment Stage 1 15km Pre-screening Process.

DAFM referred the license to Inland Fisheries Ireland (IFI), and Wicklow County Council for consultation. The IFI responded requesting that their officer be contacted prior to works commencing and that all works adhere to forestry guidelines.

On 21 May 2020 the Forest Service Inspector undertook a Stage 1 screening assessment in relation to the provisions of the Habitats Directive for European sites within 15 km from the clearfell and reforestation project.

DAFM issued a licence on 22 May 2020 together with standard felling licence conditions and a number of specific conditions and reasons are provided.

There is a single appeal against the decision to grant the licence. The grounds contend that the decision does not comply with the Habitats Directive, the Birds Directive and the Environmental Impact Assessment Directive. He submits that the EU Court of Justice has repeatedly held that Member States have an obligation to achieve the result envisaged by the Directive and they have a duty to take all appropriate measures, whether general or particular, to ensure fulfilment of that obligation. He submits that this obligation is binding on all the authorities of Member States, including, for matters within their jurisdiction, the courts. The obligation of a national court to interpret national law, as far as possible in accordance with EU law, does not require that the parties to the proceedings before it expressly assert that specific interpretation, if those parties allege at least an infringement of the relevant provisions of EU law. This must apply to the FAC as the obligation is binding on all the authorities of Member States.

In a statement to the FAC, DAFM responded to the grounds of appeal stating that the 3.14-hectare felling and reforestation project licensed as WW08-FL0188 was subjected to the DAFM's AA Screening procedure. Appropriate Assessment screening was carried out by DAFM for European sites within 15 km from the clearfell and reforestation project. Felling licence application information submitted by Coillte in the form of maps (GIS and softcopy), harvesting and establishment operational procedures as well as an Appropriate Assessment Pre-screening Report and associated Pre-screening Report methodology document were considered during the licensing process. Having reviewed the details of relevant European sites, their qualifying interests and conservation objectives, DAFM deemed that the 3.14 hectare felling and reforestation project, when considered in combination with other plans and projects as identified in the applicants pre-screening report, will not give rise to the possibility of a significant effect on the relevant screened European sites. As such, the clearfell and reforestation project was screened out and an Appropriate Assessment deemed not required in relation to the European sites considered during the screening. For the purposes of 42(16) of S.I.477 / 2011, DAFM has determined that the project will not adversely affect the integrity of any European sites. A felling licence was issued for the clearfell and reforestation project having considered (where applicable) the comments and observations of referral bodies who submitted information to DAFM in respect of the licence.

The FAC sought a report by an independent consultant in relation to this proposal. The report, dated 8 November 2020, was considered by the FAC in coming to its decision and a copy of the report is contained in the public file.

The consultant had regard to the requirements contained in the EU Directive (Directive 2011/92/EU as amended by Directive 2014/52/EU), in Irish regulations transposing the Directive into Irish law and to the Guidance for Consent Authorities regarding Sub-threshold Development published by the Department of the Environment in August 2003

The consultant concluded that the felling proposed does not come within the classes of project covered by the EU EIA Directive. They also stated that the proposed development would not be likely to give rise to significant effects on the environment of itself or cumulatively with other projects and considered that the possibility of significant effects on the environment can be ruled out on the basis of this preliminary screening.

The consultant's overall conclusion was that the proposed project would not be likely to have significant effects on the environment and the carrying out of EIA is not required. The project individually, or in combination with other plans or projects, is not likely to have any significant effect on any Natura 2000 site, having regard to the reasons for designating the sites and their conservation objectives.

In addressing the Appropriate Assessment grounds of appeal, the FAC considered, 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 projects, having regard to the conservation objectives of that designated site. The same eleven sites are identified in the Consultants' reports as by the DAFM and the same conclusion is reached. The DAFM considered each site individually and provided the reasons for screening each site out for appropriate assessment. The boundary of the closest European site, Wicklow Mountains SAC in this case is some 6km away and there is no hydrological connection with any European site. The FAC is satisfied that no serious or significant error occurred in the making of the decision regarding appropriate assessment and the requirements of Article 6 of the Habitats Directive concurs with the DAFM conclusion that the proposal itself would not give rise to the possibility of a significant effect on a European site.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal, submissions received and the consultants report. The FAC is satisfied that a serious or significant error or a series of errors was not made in making the decision and neither that the decision was made without complying with fair procedure. The FAC is thus affirming the decision of the Minister regarding licence WWO8-FLO188 in accordance with section 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



Ms. Claire Kennedy (on behalf of the FAC)