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21 January 2021

Subject: Appeal FAC167/2020 regarding licence WW08-FL0189

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 WW08-FL0189. 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 WW08-FL0189 was granted by the Department on 13th March 2020.

Hearing

An oral hearing of appeal FAC167/2020 was held by the FAC on 20th November 2020.

In attendance:

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

Secretary to the FAC: Ms. Marie Dobbyn

Appellant: Not present

Applicant's Representatives: [REDACTED]

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

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 set aside and remit the decision of the Minister regarding licence WW08-FL0189.

The application is for the clear-felling and replanting of an area of mostly coniferous trees in the townland of Ballinameesda Upper in Co. Wicklow. It is a planned clearfell for 2021. The site area is indicated to be 3.82 hectares. The trees to be felled are Sitka spruce. The application indicates that the lands would be replanted with 98% Sitka spruce and 2% Rowan. 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 Wicklow County Council for consultation. There is no response from Wicklow County Council on file.

On 12 March 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. The inspector also completed an in-combination report on the 20 March 2020.

DAFM issued a licence on 13 March 2020 together with standard felling licence conditions and a number of specific conditions.

There is one appeal against the decision. The grounds contend that the appropriate assessment screening does not comply with the law. The grounds proceed to submit suggested shortcomings in the information and evidence provided in text attribute to an Inspector and suggests that no in combination screening was available. The grounds further submit text regarding obligations on public authorities, the identified and provision of information and the consideration of measures designed to avoid or reduce the harmful effects of the plan or project on European sites. A text attributed to the Department of Culture, Heritage and the Gaeltacht was also submitted.

In a statement to the FAC, DAFM responded to the grounds of appeal stating that the 3.82 hectare felling and reforestation project licensed as WW08-FL0189 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. DAFM reviewed the details of relevant European sites, their qualifying interests and conservation objectives, DAFM deemed that the 3.82 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 carried out an Oral Hearing on the 20th of November 2020. The parties were invited to attend in person or to join electronically. The FAC sat in person at this hearing, the Appellant did not attend but the DAFM and the Applicant both participated electronically.


At the Oral Hearing the DAFM restated much of their previously submitted written response to the Appellant's grounds of appeal. They said that all of the European sites were screened out and

therefore a stage 2 screening was not required. DAFM set out the special conditions (a) to (v) and gave the reasons for them. The Applicant's Representatives described the documents and information provided with the application.

In considering the appeal the FAC examined the appropriate assessment undertaken by the DAFM including the initial screening. The proposal is not connected with or necessary to the management of any European site. The FAC examined publicly available information from the EPA and NPWS and identified the same ten sites as the DAFM within 15km from the proposal. These are, 717 Deputy's Pass Nature Reserve SAC, 1766 Magherabeg Dunes SAC, 729 Buckroney-Brittis Dunes And Fen SAC, 4186 The Murrough SPA, 733 Vale Of Clara (Rathdrum Wood) SAC, 2249 The Murrough Wetlands SAC, 4127 Wicklow Head SPA, 2274 Wicklow Reef SAC, 2122 Wicklow Mountains SAC, and 4040 Wicklow Mountains SPA. 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 all of the sites out for appropriate assessment. The inspector refers to the in-combination assessment attached to the AA screening form but the date of the in-combination consultation is 20 March 2020 and the statement submits that the DAFM relied exclusively on the in-combination details submitted by the Applicant in screening the proposal for appropriate assessment. The FAC concluded that the DAFM failed to carry out an in-combination assessment before the decision to grant the licence was made. Therefore the FAC is satisfied that the failure of the DAFM to carry out a satisfactory in combination assessment prior to the granting of the licence constituted a significant error in the making of the decision the subject of the appeal

In the above circumstances, the FAC concluded that the decision of the DAFM should be set aside and remitted to the Minister to carry out a screening for appropriate assessment under Article 6 of the Habitats Directive of the likely significant effects on European sites of the proposal, itself and in combination with other plans and having regard to the best available scientific information before the making of a new decision.

Yours sincerely



Ms. Claire Kennedy (on behalf of the FAC)