



An Coiste um
Achomhairc
Foraoiseachta
Forestry
Appeals
Committee

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July 19th, 2021

FAC ref: 429/2020.

Subject: Appeal in relation to Licence TFL00439319

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 felling licence TFL00439319.

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 TFL00439319 was granted by the Department of Agriculture, Food and the Marine (DAFM) on July 8th 2020.

Hearing

The FAC conducted a Non-Oral Hearing of the appeal FAC429/2020 regarding the decision to issue the licence TFL00439319 on May 25th 2021.

FAC Members: Mr Des Johnson (Chairperson), Mr Luke Sweetman,
Mr Iain Douglas & Mr Dan Molloy
Secretary to the FAC: Mr Michael Ryan

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Kilminchy Court,
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Decision

The FAC considered all of the documentation on the file, including application details, processing of the application by the DAFM, the grounds of appeal and all other submissions before deciding to affirm the decision of the Minister to grant licence TFL00439319.

The proposal is for the thinning of 16.3ha (digitised area 15.56ha) at Rathgarrett, Ring, Tyrellspass, County Westmeath. The site, in one plot, is planted with 100% Norway Spruce. The original application was submitted to the DAFM on November 25th, 2019 and an amended application was submitted on December 18th 2019. The proposed dates of felling (thinning only) are 2020, 2024 and 2028.

The site is located in the Boyne WFD Catchment_07, and within the Yellow [Castlejordan]_SC_010 Sub Catchment. There is a river to the north of the site, EPA named Kiltotan_and_Collinstown for which the WFD status is good. There is also a river to the south of the site, EPA named Rathgarrett, the WFD status is moderate.

In line with details as provided by the DAFM, the soil type underlining the project area is predominantly highly modified peat & peaty podzols in nature. The slope is predominantly flat to moderate (<15%). The project area does not adjoin or contain an aquatic zone(s). The vegetation type(s) within the project area comprise trees and grasses. The site is not located within 6km of a fresh water pearl muscle zone. The site is not wholly or partially within a Hen Harrier SPA. The site is not located in a high amenity or prime scenic area and is not located within an NHA, SAC or SPA. This application, together with existing thinning and or clear-felling of 3 years or less within a 500m radius, constitute an area of 33.39ha. The approximate % of digitised forest area licenced for thinning and / or clear-felling operations at present within 5km is 2.71%.

The application was referred to Westmeath County Council on March 19th 2020, there is no record of a reply on file.

Appropriate Assessment Screening (AAS) carried out by the DAFM on the following Natura 2000 sites within 15km of the project site - Lough Ennell SAC, Lough Ennell SPA, Raheenmore Bog SAC and Split Hills and Long Hill Esker SAC. All four sites were screened out for reasons of the position of the project area downstream from the Natura site and the subsequent lack of any hydrological connection.

The DAFM carried out an in-combination report on March 19th 2020. The following online planning systems were consulted in the general vicinity of the project area in the River Sub Basin Yellow (Castlejordan)-010. Westmeath County Council: fifteen domestic dwelling applications, extension to Assembly Hall, one slatted livestock shed. An Bord Pleanála: two applications relating to domestic dwellings. EPA: No results found. DAFM internal records as of March 19th 2020: Six Afforestation projects approved in the period 2010 – 2019, five forest road projects approved in the period 2006-2016, one private felling licence in 2018 and eight Coillte felling licence projects, all listed as County Offaly in the period 2016-2020.

The licence (TFL00439319) issued on July 8th, 2020 is subject to what are relatively standard conditions (a) to (g) and additional condition (h) requiring that the applicant:

- o Strictly adhere to Standards for Felling & Reforestation (October 2019).

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The DAFM in providing a statement to the FAC have stated: *A recent inspection has revealed the presence of a Bord na Mona maintained watercourse on neighbouring land adjoining the NW and SW boundary of this plantation. The original 10m buffer zone, installed at plantation development stage is fully intact and for the most part is now a gravelled track covered in grass. This buffer zone would have no difficulty accommodating a car, quad, jeep or tractor. This Norway Spruce plantation is on amorphous peat with natural percolation drainage and is not hydrologically connected to any watercourse. Thinning of this plantation will not have any impact on a Natura designation due to the fact there are no drainage channels in existence or required and thinning only removes a small percentage of the trees.*

There is one appeal against the decision to grant the licence, the summarised grounds of Appeal are as follows:

- This decision does not comply with the Habitats Directive, the Birds Directive and the Environmental Impact Assessment Directive
- The test for Appropriate Assessment Screening in Irish and EU law is: It is merely necessary to determine that there may be such an effect, rather than to state that it will not have a significant effect.
- If the proposed development is within 15km of a Natura 2000 site, it has been screened in.
- In order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, the assessment carried out under Article 6(3) of the Habitats Directive must not have lacunae and must have precise and definitive findings capable of removing all reasonable scientific doubt as to the effects on a protected site.
- If it is said to be in a different catchment, the screening must state the catchment that the application is in.
- A map showing the SACs and SPAs and the site of the proposed development should be attached.
- Re screening for Environmental Impact Assessment, it is necessary to give details of all forestry in the area and show that the cumulative afforestation does not exceed 50ha. Also it is necessary to give the total km of the forest roads in the area and show that no roads which are not included in the application will be needed to carry out this development, that includes thinning and clear-fell.
- It is the duty of the FAC to carry out both a full Appropriate Assessment Screening and a full Environmental Impact Assessment Screening.
- It is the States obligation as a Public Authority to comply with all European Directives.

In considering the grounds of appeal, the FAC noted that some grounds relate to the obligations and functioning of the FAC and are not grounds related to the decision of the DAFM to grant afforestation licence TFL00439319. The FAC considered the appellant's contention that the decision does not comply with the provisions of the EIA, Habitats or Birds Directives. The FAC firstly considered the appellant's contention that the decision does not comply with 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 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 is not covered in the Irish Regulations (S.I. No. 191 of 2017). As such, the FAC concluded that there is no breach of the provisions of the EIA Directive.

The FAC also considered the contention that the decision does not comply with the provisions of the Habitats or Birds Directives. The FAC notes that the appellant has not specified or presented evidence as to the presence of Annex IV species or other bird species and has not outlined reasons why the proposed development would threaten their protection. The FAC concludes there is no substantiated related reason on which to affect the decision.

The FAC considered the procedures followed by the DAFM in screening for AA. All Natura 2000 sites within a 15km radius were considered. Qualifying interests and conservation objectives were identified and the potential for significant effects was assessed. In-combination projects, as outlined above, were taken into consideration. The FAC is satisfied that the AAS completed by the DAFM was consistent with the requirements of Article 6(3) of the Habitats Directive and that the conclusions reached were sound. In relation to the appellant's contention that, 'It is not appropriate to consider mitigation measures at the AA screening stage' the FAC could find no basis for the contention that mitigation measures had been considered at the screening out stage. In relation to the appellants contention that 'If it is said to be in a different catchment, the screening must state the catchment that the application is in'. The FAC reviewed publicly available information on the EPA website and noted there is just one Natura 2000 site (Raheenmore Bog SAC) within the same WFD Catchment (Boyne WFD catchment) to where the proposed site is located and that there is no hydrological connection between that SAC and the proposed site. The other three Natura sites, Lough Ennell SAC, Lough Ennell SPA, and Split Hills and Long Hill Esker SAC are all located in the Lower Shannon WFD Catchment.

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal and submissions received. The FAC is satisfied that there is no serious or significant error or series of errors in making the decision and the decision was made in line with fair procedures.

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


Dan Molloy, on behalf of the FAC.

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