



An Coiste um Achomhairc
Foraoiseachta

Forestry Appeals Committee

31 May 2021

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FAC ref: 815/2020

Subject: Appeal in relation to felling licence LS09-FL0135

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 LS09-FL0135.

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 LS09-FL0135 was granted by the Department on 13 July 2020.

Hearing

The FAC conducted a hearing of appeal 815/2020 on 27 May 2021.

FAC Members: Mr Des Johnson (Chairperson), Mr Luke Sweetman, Mr Dan Molloy &
Mr Iain Douglas

Secretary to the FAC: Mr Michael Ryan

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, a consultant's report, and all other submissions, before deciding to affirm the decision to grant this licence (Reference LS09-FL0135).

The proposal is for the clearfelling and restocking of a stated site area of 13.28ha at Ballinrally, Derrylahan, Co. Laois. The current stock is 100% Sitka spruce planted between 1977 and 1981. The proposed restock species is 100% Sitka spruce (12.62ha) and 0.66ha open space is provided for. The application documents include a 'Harvest Plan', and an Appropriate Assessment Pre-screening Report identifying 5 SACs and 2 SPAs. Soils are stated to be 100% Surface Water Gleys, Groundwater Gleys,

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and the slope is moderate. The project lands are in the Tonet 020 (53%) and Tonet 030 (47%) waterbodies.

The site is in the foothills of the Slieve Bloom mountain range at an elevation of approximately 175m above sea level. It is part of an area of afforested land extending across much of the lower and mid slopes of the mountain range. The site slopes upwards towards the north-west. A stream runs by the north-western site boundary in a north-easterly direction. This stream continues on to join the Tonet River west of Camross; the Tonet is a tributary of the River Nore.

The DAFM referred the application to the County Council and National Parks and Wildlife Service (NPWS). There is no response from the County Council recorded. The NPWS reply recommends nature conservation conditions summarised as follows:

- As the compartment is within a Natura 2000 site; it is recommended that the proposed works take place from August 15 to March 31 to avoid disturbance of nesting birds. If there are works outside this period an Appropriate Assessment Screening should be carried out
- Firebreaks are not to be ploughed or cut without an Appropriate Assessment Screening

The DAFM carried out an Appropriate Assessment screening on Natura 2000 sites within a 15km radius. The Coolrain Bog SAC was screened out for reason of the absence of a hydrological pathway, the Slieve Bloom Mountains SAC for reason of the absence of a direct upstream hydrological connection, and the Knockcoller Bog SAC and Island Fen SAC for reason of location in a separate waterbody sub-catchment with no upstream connection. It is noted that an aquatic zone flows along the boundary of the project lands but does not drain into the Coolrain Bog SAC. Screened in for Stage 2 Appropriate Assessment are the Slieve Bloom Mountains SPA, the River Barrow & River Nore SAC and the River Nore SPA. Reasons given are possible effect due to the location within the Natura 2000 site, possible effect due to hydrological connectivity, and the proximity of potential habitat listed as a qualifying interest for the Natura 2000 site. An in-combination report focuses on the River Sub-Basin Tonet_020 & Tonet_030. Non-forestry projects include dwellings, agricultural shed, and an agricultural entrance. Forestry-related projects are afforestation (7), private felling (10), and Coillte felling (7). The Tonet_020 has approximately 42% forest cover and the Tonet_030 has approximately 39% forest cover.

A Natura Impact Statement (NIS) dated 29.07.2020 was submitted. There is an aquatic zone, the Marymount Stream, which flows east along the northern boundary of the site. This is a hydrological link to the River Barrow & River Nore SAC (7.5km downstream) and River Nore SPA (7.5km downstream). Site preparation for restocking includes windrow and mounding. No fertilisers are proposed, but herbicide control would be used, as necessary. A Stage 2 Appropriate Assessment is carried out for the River Barrow & River Nore SAC (3398m), the Slieve Bloom Mountains SPA (overlap) and the River Nore SPA (4130m). Qualifying interests and conservation objectives are listed. The potential for adverse effects is assessed. Mitigation measures are recommended relating to exclusion zones for machinery, silt and sediment control, extraction and removal of felled timber, brash management, reforestation, chemical use, and monitoring and contingency planning. In-combination projects considered include dwellings and forestry related - harvesting (30), forest roads (1), and afforestation (30). The total area felled and replanted (2016-2021) in Tonet_020 Sub-basin is 7.29%, and the total area felled and replanted (2016-2021) in Tonet_030 Sub-basin is 3.69%.



The DAFM produced a 'Determination' (AAD) dated 15.09.2020. This concludes that the Coolrain Bog SAC should be assessed for Stage 2 Appropriate Assessment, together with the Slieve Bloom Mountains SPA, the River Barrow and River Nore SAC, and the River Nore SPA. The reason for the inclusion of Coolrain Bog SAC is stated to be a Precautionary measure due to close hydrological links. Mitigation measures recommended relate to the Hen Harrier, the protection of adjoining/downstream aquatic based species and habitats, the Freshwater Pearl Mussel, the Otter, and adherence to specified Standards, Guidelines and Requirements. The basis for the AAD is stated to be that the site lies within a large patchwork of forest setting adjacent to the Tonet SAC and feeding into the Nore, therefore triggering FWPM requirements. As this is a 'High Likelihood Nesting Area' (HNLA), careful timing restrictions have been set out in the conditions. Within the aquatic, Otter and FWPM requirements laid out and with breeding locations considered for the Hen Harrier, no residual impact is expected. Based on objective information, no reasonable scientific doubt remains as to the absence of any adverse effect on the integrity of any European site.

The FAC commissioned a consultant's report and this is dated 29.03.2021. In particular, the report addresses the procedures followed by the DAFM in the context of the requirements of Article 6(3) of the Habitats Directive. In respect of Coolrain Bog SAC the report notes that this bog is quite small but located approximately 2.25km from the project site. It was originally assessed as being in a different sub-catchment to the felling site with no upstream connection but, following a review, it was screened in on a precautionary basis due to close hydrological links. The qualifying interests comprise of a combination of active raised bogs and degraded bogs capable of regeneration. The conservation objectives include the restoration of the favourable conservation of active raised bogs in the area and to re-establish the peat-forming capability of the degraded bogs. The report also lists two Natural Heritage Sites – Monahincha Bog and Nore Valley Bogs, both located approximately 7km from the project site. Having examined the screening assessments and Appropriate Assessments carried out, and the mitigation measures recommended in these assessments, the consultant's report concludes that the proposed project, considered alone or in combination with other plans or projects, would not give rise to the possibility of a significant effect on any of the seven Natura 2000 sites within the 15km radius.

The licence is dated 14.10.2020 and is exercisable until 31.12.2022. It is subject to thirty conditions. In addition to standard conditions which apply to licences of this type, the additional conditions essentially comprise of the mitigation recommendations set out in the AAD including those relating to:

- Protection of the Hen Harrier (Slieve Bloom Mountains SPA)
- Protection of water quality. Water setback of 25m
- 20% of aquatic buffer to be pit planted with broadleaves
- Sediment trapping measures. Geotextile silt traps to be installed in new and existing drains
- Historic mound drains with direct connectivity to relevant watercourses or aquatic zones must be blocked
- Storage of chemicals etc. at elevated location at least 50m from the nearest aquatic zone
- Measures to minimise disturbance and protect established habitat.

There is a single appeal against the decision to grant the licence. The grounds of appeal contend that the Appropriate Assessment has lacunae and does not contain complete, precise and definitive findings. There are errors in the AAD. The FAC is not a fit and proper body to consider the appeal on the basis of potential conflicts of interest. The appeal fee is not legal. The possibility of there being a significant effect is sufficient to trigger Appropriate Assessment. The screening conclusion in the AAD applies the incorrect test. The Appropriate Assessment considered information not publicly available. The NIS does not include sufficient information to make a decision. No assessment of the proposed replanting was carried out. There is a lack of precision in the recommended conditions. Some of the recommended conditions are meaningless and unenforceable. The whole forest should have been considered.

In response, the DAFM state that the DAFM carried out and documented an Appropriate Assessment screening exercise and arrived at an AAD. The NIS submitted by the applicant was considered during the Appropriate Assessment Stage 2 assessment. Site-specific mitigation measures are described in the AAD. There will be no adverse effect on any European site. In-combination effects were considered during the preparation of the AAD. It was determined that no reasonable scientific doubt remains as to the absence of any adverse effects on the integrity of any European site. Site specific measures in the AAD were attached as conditions of the licence. Conditions attached to the licence are consistent with best forest practice, national forest policy and the protection of the environment.

The FAC heard this case on 27.05.2021. The FAC noted that a number of the written grounds of appeal relate to matters beyond its remit in deciding the appeal against the decision to grant the licence LS09-FL0135, and did not address these any further. The FAC considered the appellant's contention that the Appropriate Assessment contains lacunae, and does not contain clear, precise and definitive findings, and noted that no further convincing information had been submitted to substantiate this contention. The FAC considered the procedures followed by the DAFM in its screening for Appropriate Assessment, the information contained in the NIS submitted and the Determination made by the DAFM including recommended site-specific mitigation measures. The FAC noted that the NIS specifically addressed the proposed replanting. The FAC noted that in-combination projects had been considered and that the site-specific mitigation recommendations were attached as reasoned conditions to the licence. The FAC noted and considered the conclusion of the consultant's report, and concluded that the procedures followed by the DAFM were consistent with the provisions of Article 6(3) of the Habitats Directive, and that the overall conclusion reached was sound.

The appellant forwarded an annotated version of the AAD which included comments on the recommended mitigation measures. He questions the wording and precision of a number of the recommended conditions. On this issue, the FAC concluded that the licence is subject to thirty conditions and that there is a requirement for the applicant to comply in full with the terms of the licence. In this regard, the FAC concluded that the licence, as issued, clearly sets out the matters which the applicant must comply with when carrying out the clearfelling and restocking of the site.

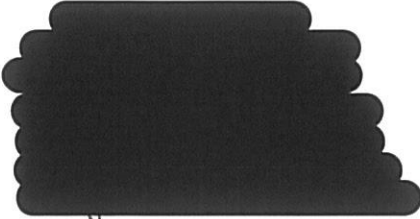
The FAC concluded that there was no significant or serious error in the making of the decision by the Minister to grant the licence and that the decision was made in accordance with fair procedures. In deciding to affirm the decision to grant the licence, the FAC concluded that the proposed development would be consistent with Government policy and Good Forestry practice.

Yours Sincerely



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Forestry Appeals Committee



Des Johnson, on behalf of the FAC

