



An Coiste um Achomhairc
Foraoiseachta

Forestry Appeals Committee

31 May 2021

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

FAC ref: 520/2020

Subject: Appeal in relation to felling licence TFL00427519

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 TFL00427519.

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 TFL00427519 was granted by the Department on 13 July 2020.

Hearing

The FAC conducted a hearing of appeal 520/2020 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, and all submissions/observations, before deciding to affirm the decision to grant the Licence (TFL00427519).

The proposal is for the felling (clearfell and thinning) and restocking on a stated site area of 15.71ha at Carrickmagrath, Co. Donegal. The site area is in 2 plots - Plot 1 is 10.07ha and Plot 2 is 5.64ha. The proposal for Plot 1 is for thinning in 2021 and clearfell in 2029. The proposal for Plot 2 is for thinning in 2022 and 2026. Both plots contain Sitka spruce, Japanese larch and Lodgepole pine. Plot 1 would be restocked with 85% Sitka spruce and 15% Norway spruce. The application documents include a 'Harvest Plan', which states that there are no aquatic zones or relevant watercourses on the site.

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The DAFM referred the application to the Loughs Agency, National Parks and Wildlife Service (NPWS) and Donegal County Council. The NPWS responded with no specific comments. There is no record of a response from Donegal County Council. The Loughs Agency response included the following observations and recommendations:

- Significant increases in sediment and any impacts of excessive amounts of bark and woody debris should be avoided
- Consideration should be given to straw bales on the downslope sides of timber stacking areas, particularly in wet weather
- Felling and extraction should minimise the number of stream and drain crossings
- Watercourses and buffer zones should be kept free from harvested branches and tops as far as practicable
- Track ruttings should be kept to a minimum
- Best environmental practice should be demonstrated by the applicant when working close to watercourses.

The Inspector's certification states that the site is sensitive to fisheries. It is not within 6km of a Freshwater Pearl Mussel zone. The proposal is compatible with the Water Framework Directive objectives. There are no archaeological sites or monuments within 200m. There are no high amenity landscape considerations. Soils are highly modified peat and peaty podzols and the slope is flat to moderate. The site does not contain or adjoin an aquatic zone. An Appropriate Assessment screening of Natura 2000 sites within a 15km radius is undertaken. Three sites are assessed and screened out for Stage 2 Appropriate Assessment – Croaghonagh Bog SAC, Lough Eske and Ardnamona Wood SAC and the River Finn SAC. All sites are screened out for reason of the absence of an aquatic zone or any significant relevant watercourse within or adjoining the project lands. An in-combination report focuses on the River Sub-basin Burn Durnett_010. Non forestry projects listed include dwellings, domestic extensions, agricultural buildings and an all-weather training facility. Forestry related projects (since 2015) are forest roads (1), Private felling (2) and Coillte felling (33).

The licence was issued on 13.07.2020 and is subject to standard conditions.

There is a single appeal against the decision to grant the licence. The grounds contend that the legitimacy of the existing plantation has not been established and the FAC is now required to do this. Incomplete applications should be returned to the Forestry Service. No reliance should be given to the fact that the NPWS did not make an individual objection. The decision does not comply with the requirements of the Habitats, Birds and EIA Directives. In the Appropriate Assessment screening. It is merely necessary to establish that there may be an effect on a Natura 2000 site to trigger Stage 2 assessment. If the development is within 15km of a Natura 2000 site, it is screened in for Stage 2 assessment. It is not appropriate at screening stage to take account of mitigation measures. Any assessment carried out under Article 6(3) of the Habitats Directive may not have lacunae and must have complete, precise and definitive findings. If the proposed development is in a different catchment to a designated site this should be stated. A map showing the SACs and SPAs and the project site should be attached. Details of all forestry in the area should be given. The FAC has a duty to carry out screening for Appropriate Assessment and screening for EIA.



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In response, the DAFM state that all relevant assessment criteria were fully adhered to, and the approval is in order.

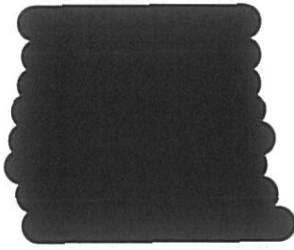
The appeal was heard by a division of the FAC on 27.05.2021. The FAC noted that the area is characterised by rural one-off housing (much along the public roads), enclosed agricultural fields and forestry. The FAC considered the written grounds of appeal and, in the first instance, considered the contention that the licence decision does not comply with the requirements of the EIA, Habitats and Birds Directives. In respect of the EIA Directive, the proposal is for clearfelling and restocking on a stated site area of 15.71ha. Clearfelling and restocking for the purposes of forestry management and not entailing any change in land use, is not a class of development contained in Annex I or Annex II of the Directive and is not a class of development to which the transposing Regulations apply. Furthermore, the proposed development does not include any works which, by themselves, would constitute a class of development to which the Directive and transposing Regulations apply. In these circumstances, the FAC concluded that the decision is not in breach of the provisions of the EIA Directive.

The FAC considered the screening undertaken in respect of the provisions of Article 6(3) of the Habitats Directive. The DAFM carried out a screening of Natura 2000 sites within a 15km radius of the project lands and the FAC found no reason why that radius should be expanded in this case. Three sites were assessed - Croaghonagh Bog SAC, Lough Eske and Ardnamona Wood SAC and the River Finn SAC and were screened out for Stage 2 assessment with reasons given relating to the absence of an aquatic zone or any significant relevant watercourse within of adjoining the project lands. In combination projects focused on the River Sub-basin Burn Durnett_010 were considered in the assessment. The FAC found no reason to conclude that the DAFM had considered mitigation measures in their screening or that these sites should have been screened in for Stage 2 Appropriate Assessment for the reason that they are located within 15km of the project lands. Based on the information before it, the FAC is satisfied that the procedures adopted by the DAFM in this case were consistent with the requirements of Article 6(3) of the Habitats Directive and that the screening conclusion was sound. The FAC found no reason to conclude that the decision to grant the licence is in breach of the Birds Directive.

The appellant contends that the legitimacy of the existing plantation has not been established and the FAC is now required to do this. No evidence is provided by the appellant to question the legality of the existing plantation and there is no information before the FAC to question the legality of the existing plantation. The consideration for the FAC in this case is the decision to grant the licence TFL 00427519.

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

Yours Sincerely



Des Johnson, on behalf of the FAC