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25th June 2021

Subject: Appeal FAC 673/2020 regarding licence TFL00486720

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) in relation to the above licence issued by the Minister for Agriculture, Food and the Marine. The FAC established in accordance with Section 14 A (1) of the Agriculture Appeals Act 2001 (as amended) has now completed an examination of the facts and evidence provided by all parties to the appeal.

Background

The licence TFL00486720 relates to the thinning and clearfell and replanting of forest on a site described in the application as 17.2 ha (and made up of two plots) at Gortnacowly, Mealagh, Co Cork. The thinning was scheduled to occur in 2020 on plot 1 comprising some 13.3 ha and the clearfell is scheduled to occur on the full project area in 2027. The existing stock on plot 1 at the proposed thinning time was set out as 90% Sitka spruce, 5% Japanese larch and 5% lodgepole pine and the existing stock on the overall site at clearfell (2027) is set out as 99.7% Sitka spruce and 2.3% lodgepole pine. The licence was issued by the DAFM on 17th August 2020. The applicant in this case is Mr Brian Perrott, the underlying soil type is described in the DAFM documentation as being predominantly podzolic in nature and the restocking proposed is approximately 81.5% Sitka spruce, 3.5% lodgepole pine and 15% broadleaf.

Hearing

An oral hearing of appeal FAC 673/2020, of which all parties were notified, and representatives of the DAFM attended, was held by the FAC on 17th June 2021.

In Attendance at Oral Hearing:

Department Representative(s):	Ms. Eilish Kehoe, Mr. Eugene Curran.
Appellant:	Not in attendance.
Applicant / Representative(s):	Not in attendance.
FAC Members:	Mr. Des Johnson (Chairperson), Mr. Luke Sweetman, Mr. Dan Molloy & Mr. Seamus Neely.
Secretary to the FAC:	Mr. Michael Ryan.

Decision

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notice of appeal, submissions made at the oral hearing and all other submissions received, and, in particular, the following considerations, the FAC has decided to affirm the decision of the Minister regarding licence TFL00486720.

The application documents include a 'Harvest Plan', which states that there are no aquatic zones or relevant watercourses on the site, that the thinning & clearfell is to be by Harvester and Forwarder, that planting is to be by Windrowing & Mounding, that site access is in place to the public road, that there are powerlines affecting the site, and that the slope is steep. The approach set out includes for consultation with residents, the erection of safety signage, measures to protect habitats and biodiversity features, and limiting of operations to dry weather. It is proposed to use brash mats along extraction routes and it is stated that the forest in this case has been 'first thinned'. The application was referred to Cork County Council and no response is to be found on file. A submission from a member of the public relating to this (and other) licence application(s) was received on 30th April 2020.

A screening for Appropriate Assessment was undertaken by DAFM as set out in the Inspector's certification that identified four European sites (Bandon River SAC 002171, Caha Mountains SAC 000093, Derryclogher (Knockboy) Bog SAC 001873 and Glengarriff Harbour And Woodland SAC 000090) within 15km of the project, all of which were screened out. A standalone in-combination report which includes a statement, and is based on a spatial run during the week of 14th July 2020, is to be found on file. The licence was approved subject to conditions (1 to 5 and a to k) and which included those relating to archaeology.

The decision to grant the Licence is subject to one appeal. The grounds of appeal include; submission that there is a breach of Article 4 (3) of the EIA Directive 2014/52/EU through failure to carry out an adequate screening for EIA, submission that there is a breach of Article 4 (4) of the EIA Directive 2014/52/EU submitting that the licence application does not represent the whole project, submission that there is a breach of Article 4 (5) of the EIA Directive 2014/52/EU and stating that as the application does not represent the whole project therefore any determination reached in terms of EIA screening is invalid, submission that DAFM has failed to carry out an adequate EIA screening of the proposed development and stating that there is no foundation for the conclusion reached on the basis of the responses to the IFORIS checkbox queries or any other basis upon which this conclusion is made and there is, in consequence, an error of law in the processing of this application, submission that the afforestation of these lands was carried out without an appropriate assessment of the requirement for an EIA, submission that there is no evidence that the potential impact on non-designated European Annex I habitats has been adequately considered as part of the approval process, submission that this licence and its associated operations threaten the achievement of the objectives set for the underlining waterbody or waterbodies under the River Basin Management Plan for Ireland 2018-21, stating that Forestry works have the capacity to impact on water quality, that in the absence of adequate consultation and assessment of the cumulative impact of this project with other existing forestry and non-forestry projects and land uses, approved and proposed, in the same catchment the achievement of the objectives set for

the underlying waterbody or waterbodies under the River Basin Management Plan for Ireland cannot be assured, submission that there has been no adequate overall In-Combination assessment of this project, submission that the Harvest Plan is not consistent with the requirements of the Interim Standard for Felling & Reforestation, submission that the licence conditions cannot preclude this development from compliance with the future regulatory environment, submission that the licence should include Commencement and Conclusion of Operations conditions, submission that the licence should contain a condition that plans and works must be inspected by the Forest Service prior to, during and post works to ensure compliance with all environmental conditions and mitigations, submission that the licence should include stringent and enforceable conditions regarding notification to appropriate bodies, groups and the public concerned in the case of any spraying of chemicals, submission that the Licence conditions do not provide, as would be required by Article 12 of the Habitats Directive, a system of strict protection for the animal species listed in Annex IV (a) of that Directive in their natural range, prohibiting deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration and submission that the Licence conditions do not provide a system of protection for wild birds during the period of breeding and rearing consistent with the requirements of Article 5 of the Birds Directive.

In a statement to the FAC, the DAFM submitted that the decision was issued in accordance with procedures S.I. 191/2017 and the 2014 Forestry Act and that it is satisfied that all criteria as outlined in the standards and procedures policy have been adhered to in making a decision on the application. The statement sets out a response to the grounds of appeal which includes a specific reference that felling and replanting an already established forest does not involve an activity or project that falls within the specified categories of forestry activities that require the carrying out of a screening assessment for sub-threshold EIA, that the documentation submitted by the applicant in relation to this application was compliant with the requirements of Article 4(4), that DAFM complied with requirements by assessing the information submitted by the applicant and which it considers compliant with the requirements set out in Article 4(4) and Annex IIA, that it took into account the results of the preliminary verifications or assessments of the effects on the environment carried out under Birds and Habitats Directives and the Water Framework Directive, and that (in relation to ground number 5) these lands did undergo a regulatory consent process before receiving approval and that this would have involved an assessment for the requirement for an EIA.

At the oral hearing the DAFM representatives updated the FAC on relevant dates, referrals to consultation bodies, that a submission had been received by DAFM in relation to the licence application, that it was desk assessed, that an Appropriate Assessment screening for sites within 15 km was carried out, and that all four European sites identified were screened out. In response to queries from the FAC the DAFM confirmed the date for the in-combination report and statement and that it had been considered as part of the making of the decision on the licence. It was also confirmed that the conditions proposed in the archaeology report were included in the licence. In response to a specific question from the FAC in relation to ground no 6 in the appeal the DAFM representative confirmed that the potential impact on non-designated European Annex I habitats had been adequately considered by DAFM as part of the approval process. The DAFM representative in response to queries from the FAC also confirmed that there were no

relevant watercourses on the site nor were there drains carrying water from the site. In relation to the answers recorded at question 1.2 on the Inspector's Certification regarding project compatibility with Water Framework Directive objectives and question 42 regarding submissions from the public, the DAFM representative confirmed that these answers should have been entered as 'yes'. While the FAC considered this to be an error and having regard to the submissions made at oral hearing, it did not consider that this constituted a serious or significant error in the making of the decision on the licence.

In addressing the grounds of appeal, the FAC in the first instance considered the grounds regarding Environmental Impact Assessment and related matters including that the DAFM has failed to carry out an adequate EIA screening of the proposed development. The FAC noted that the EU EIA Directive sets out in Annex I a list of projects for which EIA is mandatory, that 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 is 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 felling of trees, as part of a forestry operation, with no change in land use, does not fall within the classes referred to in the Directive, and is similarly not covered by the Irish regulations (S.I. 191 of 2017). The decision under appeal relates to a licence for the felling and replanting of an area of 17.2 ha. The FAC does not consider that the proposal comprises deforestation for the purposes of land use change and neither that it falls within the classes included in the Annexes of the EIA Directive or considered for EIA in Irish Regulations and therefore considered that breaches of Article 4(3), 4(4) and 4(5) had not occurred. Neither was the FAC satisfied that the DAFM had erred in its processing of the licence decision in this case as it relates to these grounds of appeal.

Specifically in relation to the contention in the appeal that the afforestation of these lands was carried out without an appropriate assessment of the requirement for an EIA the FAC noted the content of the DAFM statement in relation to this ground wherein it sets out that *'These lands did undergo a regulatory consent process before receiving approval. This would have also involved an assessment for the requirement for an EIA'*. Based on the information before it, the FAC found no reason to conclude that the existing forestry is unauthorised or that the DAFM had erred in its processing of the decision to grant the licence in this case as it relates to this ground of appeal.

The FAC considered the contention in the grounds of appeal that the licence and its associated operations threaten the achievement of the objectives set for the underlying waterbody or waterbodies under the River Basin Management Plan 2018-2021. In doing so the FAC noted the content of the DAFM statement, the submissions made at oral hearing in response to questions from the FAC wherein the DAFM representative gave an account of drainage matters affecting the site including that there are no relevant watercourses on the site nor are there drains carrying water down from the site. The FAC also noted that


the project lies within the sub-basin of the MELAGH_010, that the waterbody has been assigned a high status in the assessment period 2013-18 and is recorded as not being at risk. The appellant did not submit any specific information regarding effects on water quality or specific matters relating to the pathways related to the proposal. Based on the information available to it and having regard to the scale, nature and location and the conditions under which operations would be undertaken, the FAC is not satisfied that the proposal poses a significant threat to water quality.

The FAC considered grounds numbered eight, nine and ten in the appeal including in relation to the in-combination assessment for the project and that the Harvest Plan is not consistent with the requirements of the Interim Standard for Felling & Reforestation. The FAC finds that a Harvest Plan was provided with the application which outlined inventory and restocking details and maps identifying the proposal, the absence of water courses and other features on the site. The FAC also noted that the appellant did not submit specific concerns relating to these grounds and noted the content of the statement from DAFM in this connection including the confirmation provided at the oral hearing that the in-combination considerations were taken into account by the DAFM as part of the decision-making process. The FAC noted that the 'Harvest Plan' is a guide for the developer and that the proposed development must be carried out strictly in accordance with the terms of the licence. Based on the information before it, the FAC found no reason to conclude that the DAFM had erred in its processing of the decision to grant the licence in this case as it relates to these grounds of appeal.

Regarding the conditions that the appellant suggested should be attached to the licence relating to commencement and conclusion of operations, notifications and inspections, and notification in the case of the spraying of any chemicals, the FAC noted the response provided to it by DAFM and considered that the Minister may attach conditions, including the erection of site notices and any other environmental or silvicultural requirements, as the Minister considers appropriate. The FAC is satisfied, based on the information available to it, that the inclusion of the conditions relating to these grounds in the appeal in this case, was not required. Neither did the FAC consider that the DAFM erred in its processing of the licence decision in this case as it relates to these grounds of appeal.

The FAC considered the appellant's stated grounds of appeal that the Licence conditions do not provide a system of strict protection for the animal species listed in Annex IV (a) of that Directive in their natural range, prohibiting deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration, and that the licence conditions do not provide a system of protection for wild birds during the period of breeding and rearing consistent with the requirements of Article 5 of the Birds Directive. The FAC noted that the appellant fails to provide specific details of species of wild birds or Annex IV species present on the project lands or give convincing reasons to show how the proposed development would be likely to give rise to adverse effects on them. In these circumstances, the FAC finds no reason to conclude that additional conditions should be attached to the licence. The FAC is satisfied, based on the information available to it, that the inclusion of the conditions as raised in these grounds of appeal in this case, was not required.

In considering the appeal the FAC had regard to the record of the decision, the submitted grounds of appeal and submissions received including at the oral hearing. The FAC is not satisfied that a serious or significant error or a series of errors was made in making the decision or that the decision was made without complying with fair procedure. The FAC is thus affirming the decision of the Minister regarding licence TFL00486720 in line with Article 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.


Seamus Neely On Behalf of the Forestry Appeals Committee