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18th March 2021

Subject: Appeal FAC453/2019 regarding licence TFL00356919

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 has now completed an examination of the facts and evidence provided by all parties to the appeal.

Background

Licence TFL00356919 is for the felling and thinning of 11.01 ha of woodland on an overall site of 13.79 hectares including road and reserved area for electricity transmission lines at Lisnagea, County Leitrim, which was approved by the Department of Agriculture, Food and the Marine (DAFM) on the 6th December 2019.

The appeal was considered by FAC Members: Mr. Donal Maguire (Chairperson), Mr. Derek Daly, Mr Iain Douglas, Mr. Vincent Upton on the 12th March 2021.

Decision

Having regard to the evidence before it, including the record of the decision by the DAFM, the notice of appeal, submissions received including the following considerations, the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister regarding licence TFL00356919.

Licence

The licence pertains to the to the felling and thinning of 11.01 ha of woodland on an overall site of 13.79 ha including road and reserved area for electricity transmission lines at Lisnagea, County Leitrim. The licence is largely for thinning but areas of clearfell are also proposed. The site is composed of 5 individual plots, plots 1,2 and 3 are contiguous and plots 4 and 5 are separate individual plots. The soil type underlining the project area is indicated as predominantly podzols in nature. The slope is predominantly flat to moderate. The felling area which was mainly planted in the in the 1990s is a sitka spruce plantation. The application included maps of the area indicating the individual plots referred to in the licence application. In the course of the assessment by DAFM in a response to a further information

request a harvesting plan and maps indicating haulage routes, bridging points, biomap, zones of exclusion for archaeology and areas of proposed mixed broadleaf areas were submitted.

The proposal was referred to Leitrim County Council who in a response which stated a number of conditions related to roads and traffic.

The licence was also referred to NPWS who in a response indicated no objections in principle but did refer to a number of concerns chiefly related to; breeding curlews in the area and no operations to occur in the breeding season, that any replanting be set back from a salmonid stream; reference is made to the presence of red squirrel along this stream, protection of an archaeological monument and native trees surrounding it and issues relating to the protection of biodiversity along a bank at the side of a narrow road.

The licence was also referred to the archaeological section of the Department who recommended conditions and included exclusion areas on a map to protect archaeological remains.

The DAFM assessment was a desk assessment. An Appropriate Assessment screening was carried out which is recorded on the file and the screening considered and identified one site within 15km and that there was no need to expand this radius in this case and other plans and projects considered are also recorded. The European site considered was Cuilcagh-Anierin Uplands SAC 00058. In combination was also assessed. The overall conclusion was to screen out all sites concluding no possibility of a significant effect on any Nature site, and that Appropriate Assessment was not required.

The proposal was assessed in relation any potential impact on archaeological remains and a report from the archaeologist concluded no impacts arising from the proposed road but recommended conditions. The licence was issued on the 6th December 2019 subject to standard conditions and a number of other specific conditions relating to curtailing operations in the curlew breeding season, setback areas to protect areas of archaeological interest and also Schedule 3 which provides for the planting of broadleaves in plots 3 and 5 as set out in table 2.

Appeal.

There is one appeal against the decision.

The grounds refer to that the inspector identified there were Natura sites within 15 kilometres of the project and this is a trigger for Appropriate Assessment; the project should have been screened in for Appropriate Assessment. Reference is made to the inspector's certification and in particular Q3 and Q4 but the inspector fails to show any evidence on which this answer is based. In most cases the inspector states that the Natura site(s) is in a different catchment but fails to state which catchment that it is in. In these circumstances the only legal answer is that the application has been screened in for Appropriate Assessment.

In a statement to the FAC, in regard to the granted proposed licence TFL00356919 the DAFM indicated that the decision was issued in accordance with procedures, S.I. 191/2017 and the 2014 Forestry Act and the Department is satisfied that all criteria as outlined in the following standards and procedures have been adhered to in making a decision on the application. The Statement from Inspectorate indicates

that there is one Natura 2000 site located within 15km of this proposal. Cuilcagh–Anieran Uplands SAC 00584 is located ‘upstream’ from this proposal. In light of this, the proposal will not have any impact on any of the QIs outlined in the site synopsis. This proposal will not have an impact alone or in combination with other forest and non forest plans and projects in the area.

In addressing the grounds of appeal, the FAC considered, in the first instance, the contention that the proposed development should have been addressed in the context of the EU EIA Directive (Directive 2011/92/EU as amended by Directive 2014/52/EU). The FAC considered that the EU EIA 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 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 Forestry Act 2014 defines a forest as land under trees with a minimum area of 0.1 ha and tree crown cover of more than twenty per cent of the total area or the potential to achieve this cover at maturity. The decision under appeal relates to a licence for the felling and thinning of 11.01 ha of woodland on an overall site of 13.79 hectares.

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.

The DAFM considered the application across a range of criteria, including water, designated areas, landscape and cumulative effects and determined that the project was not required to undergo the EIA process. The proposal as described is being for the felling and thinning of 11.01 ha of woodland on an overall site of 13.79 hectares in a commercial forest managed for timber production which is considerably sub-threshold for the mandatory submission of an EIAR. Having regard to the record of the decision and the submitted grounds and the nature, scale and location of the proposal the FAC is satisfied that the proposal would not result in any likelihood of significant effects on the environment and that the DAFM did not err in its decision made regarding EIA.

Under Article 6(3) of the Habitats Directive, any plan or project not directly connected with or necessary to the management of a European site, must be subject to an assessment of the likely significant effects the project may have on such a designated site, either individually or in combination with other plans

projects, having regard to the conservation objectives of that designated site. In considering the appeal the FAC examined the Appropriate Assessment undertaken by the DAFM including the initial screening.

The FAC examined publicly available information from the EPA and NPWS and identified the same site as the DAFM within 15km from the proposal. The FAC is satisfied that there was no need to extend the radius in this case. The FAC considered nature, scale and location of the proposal, the European site identified and its conservation objectives and the reasons provided by the DAFM. The DAFM provided the reasons for screening the site out for appropriate assessment. Details of other plans and projects were also examined. The FAC is satisfied that the DAFM did not make any serious or significant error in their Appropriate Assessment screening and concurs with the conclusions reached.

The proposal is for the thinning and felling of a mature forest at a lower level than the nearest Natura site which is an upland area and there is no evidence of any protected habitats or species on the site. The DAFM recorded forestry and non-forestry projects considered in combination with the proposal. Having regard to the record of the decision, the submitted appeal and available information, the FAC is satisfied that the proposal would not result in any significant effects on any European site, itself or in combination with other plans or projects and that the DAFM did not err in its screening for Appropriate Assessment.

In relation to the grounds of appeal that the Inspector answered in the affirmative to Questions 3 and 4 in the Certification Report but did not provide any evidence as to why he did so, the FAC finds Question 3 refers to the review of all referrals and submissions in this case, and the FAC finds based on the evidence before it that no referrals and submissions were made in this case. In regard to Question 4 it refers to having sufficient information to make a sound judgement regarding the likelihood of the project having a significant effect on a European site. The FAC in considering these matters, again reviewed the evidence before it, including the Appropriate Assessment screening, and is not satisfied that a serious error or a series of error was not made by DAFM in the making of their determinations in this case or particular issue.

Regarding water quality the site is within the Shannon (Upper) _70 waterbody and in relation to River Waterbodies Risk, the projection is indicated as at risk and the WFD status is moderate as documented by the EPA. There is no watercourse on the site. 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 therefore considers and is satisfied that no issues arise to constitute errors in the making of the decision regarding licence TFL00356919.

In considering the appeal the FAC had regard to the record of the decision and 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 TFL00356919 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

Yours sincerely,

[Redacted Signature]

Derek Daly On Behalf of the Forestry Appeals Committee

