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15th. March. 2021

Subject: Appeal FAC 055/2020 regarding licence no TFL00371219

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Minister for Agriculture, Food and Marine (DAFM) in respect of licence TFL00371219.

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 TFL00371219 was granted by the Department on 21.1.20

An oral hearing of appeal FAC 055/2020 of licence TFL00371219 was conducted by the FAC on 05.03.2021.

Attendees:

FAC: Mr Donal Maguire (Chairperson), Mr Vincent Upton, Mr Iain Douglas & Mr Derek Daly

Secretary to the FAC: Ms Marie Dobbin

Appellant: [REDACTED]

Applicant: [REDACTED]

DAFM representatives: Ms Eilish Kehoe and Mr Seppi Hona

Decision

The appeal concerns a licence to carry out thinning of 2.25 ha of forest in Ballyduff Co Offaly. 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, submissions made at the Oral Hearing and all other submissions, before deciding to affirm the decision to grant this licence (Reference TFL00371219).

This project comprises hectares of 2.25 forest located close to Tullamore Co Offaly. The predominant soil type underlining the project area is described as being predominantly podzols in nature. The slope is predominantly flat to moderate. Road access is described as being good.

Because of its location, small size and the nature of the planned project (thinning) the application did not reach any thresholds that would trigger further consultation and as such it was not referred to any external authority or agency for comment. Neither was it referred for comment to DAFM's internal archaeology or ecology services.

The licence issued on 21.01.20 and is subject to standard conditions with no extra conditions attached.

There is one appeal against the decision to grant the licence. *Inter-alia*, the grounds contend that "The Appropriate Assessment Screening does not comply with the requirements of the law". To substantiate this assertion the appellant further states that "It is our submission that to comply with the Directive, Regulations and the Judgements of the OEU and the High Court it is necessary at the minimum, where a waterbody is concerned, to examine the catchment map and to state which catchment the development is in", and that "It is our submission that to comply with the Directive, Regulations and the Judgements of the OEU and the High Court it is necessary at the minimum, where a Turlough is concerned to show evidence that there is no groundwater connectivity with the development lands" and finally, "it is our submission that the FAC must comply fully with the attached document; '*General observations from the National Parks and Wildlife Service of the Department of Culture, Heritage and the Gaeltacht in relation to forestry application referrals*'.

In a statement to the FAC, the DAFM submitted that Appropriate Assessment (AA) screening was carried out by DAFM for European sites within 15 km of the project together with an in-combination assessment. The AA Screening report was completed by the DAFM Inspector and contains recommendations regarding screened European Sites. All QIs/SCIs were also considered during the screening exercise. The conclusion of the assessment was stated by the DAFM as "taking account of the project as described, the submissions received, the environmental analysis, the conditions attached, this project, in combination with other plans and projects, is in keeping with good forestry practice

Following AA screening, and pursuant to Article 6(3) of the Habitats Directive, the European Communities (Birds & Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011) (as amended) and the Forestry Regulations 2017 (S.I. No. 191 of 2017), as amended by inter alia the Forestry (Amendment) Regulations 2020 (S.I. No. 31 of 2020), DAFM determined that there was no possibility of the felling and reforestation project TFL00371219 having any negative impact on the SCI's or QI's of Charleville Wood SAC, Clara Bog SAC, Cionaslee Eskers and Deny Bog SAC, Raheenmor Bog SAC, River Nore River Barrow SAC, or Split Hills and Long Hill Esker SAC, as the position of the project area is downstream from these Natura sites, and there is a subsequent lack of any hydrological connection. On the file the DAFM inspector contended on the 5th of July 2020, "that, this plantation is on mineral soil with natural percolation drainage. No hydrological connection to any watercourse exists or is required. This project should have no effect on any designated Natura site".

The FAC held an oral hearing of the appeal on the 5th of March 2021. The DAFM participated electronically, neither the applicant nor the appellant was represented.

The DAFM submitted its view that the proposed project did not constitute an activity covered by the EIA Directive. The DAFM further contended that the project design, together with adherence to the

conditions set out in the licence, would ensure that potential residual impacts would not arise and that the project would not prevent or obstruct the Qualifying Interests/ Special Conservation Interests of the relevant European sites.

In addressing the grounds of appeal, the FAC noted the procedures adopted by the DAFM in its screening, listing the qualifying interests and conservation interests for each site and assessing the project design, location of the project and possible pathways to the listed designated sites. The FAC consulted publicly available information from the EPA and NPWS and identified the same sites as the DAFM, which does not include any Special Protection Areas. There is no watercourse close to this forest and there is no evidence of a hydrological connection to any watercourse that would be affected by the thinning operation. The proposal involves the thinning of a managed forest and there is no evidence of protected habitats or species being present on the site. The FAC concurs with the conclusions reached by the DAFM and is not satisfied that an error was made in the Appropriate Assessment screening undertaken.

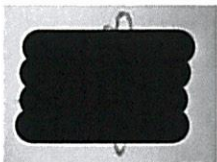
The NPWS were not consulted and the appellant did not specify which particular elements of the NPWS 'submission document' the grounds refer to. The FAC could not determine any error on DAFM's part in this regard.

With regard to the issue of turloughs raised in the grounds, the FAC noted that there was no evidence of the occurrence of turloughs in the vicinity of the site, or of the site having any connectivity, via groundwater, to any such features, thus the FAC did not find that any error had been made concerning these grounds in arriving at the licence decision.

The FAC did note two minor clerical errors in the written DAFM submissions, the first concerned the lack of a clearly stated date for the final assessment, prior to the decision being made. This issue was resolved to the FAC's satisfaction at the Oral Hearing by the DAFM representatives by reference to the inspector's certification reports, which were clearly dated and demonstrated that the assessment had been carried out prior to the licensing decision being made. The second error was an incomplete filling-in of the 'site details' section of the automated AA screening form. The FAC were satisfied that this was a minor clerical or IT error and that it had no bearing on the substance of the decision.

In deciding to affirm the decision to grant the licence, the FAC considered that the proposed development would be consistent with Government policy and Good Forestry practice.

Yours Sincerely



Donal Maguire on behalf of the Forestry Appeals Committee

