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18th March 2021

Subject: Appeal FAC 278/2020 regarding licence WX08-FL0099

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 WX08-FL0099 for felling and replanting of forest on 3.04 ha at Bargy Commons & Skeaterpark, Co. Wexford was issued by the Department of Agriculture, Food and the Marine (DAFM) on 22nd May 2020.

Hearing

A hearing of appeal FAC 278/2020 was held by the FAC on 10th February 2021. The FAC Members in attendance at the hearing were Mr. John Evans (Chairperson), Mr. James Conway, Mr. Seamus Neely, and Mr. Vincent Upton.

Decision

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notice of appeal, submissions received and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister for Agriculture, Food and the Marine regarding licence WX08-FL0099.

The licence pertains to the felling and replanting of a forest on 3.04 ha at Bargy Commons & Skeaterpark, Co. Wexford. The forest is currently composed of Sitka spruce [SS] (94%) and Lodgepole Pine [LPS] (6%) and replanting would be of Sitka spruce with 5% open space. The site is described as having a predominantly moderate slope (<15%), the habitat is described as predominantly coniferous plantation (WD4) and the soil type is described as surface water and ground water gleys. It is located in the Cleristown Stream_010 waterbody and for which the WFD status was recorded as moderate during the 2013-2018 assessment. A pre-screening report and harvest plan were prepared and submitted by the Applicant.

A screening for appropriate assessment was undertaken by DAFM (21st May 2020) which identified fifteen European Sites within 15km (781 Slaney River Valley SAC, 4076 Wexford Harbour and Slobs SPA, 696 Ballyteige Burrow SAC, 4020 Ballyteigue Burrow SPA, 709 Tacumshin Lake SAC, 4092 Tacumshin Lake SPA, 697 Bannow Bay SAC, 707 Saltee Islands SAC, 4033 Bannow Bay SPA, 4019 The Raven SPA, 2269 Carnsore Point SAC, 710 Raven Point Nature Reserve SAC, 4118 Keeragh Islands SPA, 4009 Lady's Island Lake SPA, and 704 Lady's Island Lake SAC). The likely zone of impact was not extended to include further European Sites in this case. All fifteen sites were screened out for the purposes of Appropriate Assessment and the reasons for the screening conclusions reached are provided in the screening form in respect of each site considered. The application was referred to Wexford County Council and a response which did not raise any specific objection to the proposal was received on 15th January 2020. The licence was issued on 22nd May 2020 subject to a number of conditions related to environmental protection and sustainable forest management, water quality, the road network and traffic safety.

There is one appeal against the decision. The grounds contend that the decision does not comply with the Habitats Directive, the Birds Directive, and the Environmental Impact Assessment Directive. The appeal references several court cases and include quotes from Case C-323/17 regarding measures considered at the screening stage for Appropriate Assessment. The grounds suggest that regarding screening for Environmental Impact Assessment it is necessary to give details of all forestry in the area and show that the cumulative afforestation does not exceed 50 ha and that it is necessary to give the total km of the forest roads in the area and show that no roads which are not included in the application will be needed to carry out this development, that includes thinning and clear-fell. The Appellant also submitted grounds relating to suggested legal obligations of the Forestry Appeals Committee.

In a statement to the FAC, the DAFM stated that it is satisfied that the decision met the relevant criteria and guidelines and that the decision was issued in accordance with DAFM procedures, S.I. 191/2017 and the 2014 Forestry Act. It submits that the 3.04 hectare felling and reforestation project licenced as WX08-FL0099 was subjected to the DAFM's AA Screening procedure, as set out in the document entitled Appropriate Assessment Procedure: Guidance Note & iFORIS SOP for DAFM Forestry Inspectors (v.05Nov19) (DAFM, 2019). The statement confirms that in processing the application the documentation and application information submitted by Coillte in the form of maps (GIS and softcopy), harvesting and establishment operational procedures as well as an Appropriate Assessment Pre-screening Report and associated Pre-screening Report methodology document were considered during the licencing process and that having reviewed the details of relevant European sites, their qualifying interests and conservation objectives, the Department deemed that the 3.04 hectare felling and reforestation project, when considered in combination with other plans and projects, will not give rise to the possibility of a significant effect on the relevant screened European sites. As such, the clear-fell and reforestation project was screened out and an Appropriate Assessment deemed not required in relation to the European sites considered during the screening. The statement sets out that a screening report was completed by the Inspector which contains the recommendations regarding screened European Sites and that a number of the QIs/SCIs were truncated on the AA Screening form for project WX08-FL0099 when outputting the form related to the screening exercise. It is confirmed by the DAFM in its statement that all QIs/SCIs were considered during the screening exercise itself and that the screening

determination is considered sound. The statement confirmed that for consideration of in-combination effects of the proposed project, DAFM carried out an in-combination assessment and included an associated in-combination statement based on this information and that it is the position of the Department that clear-felling and replanting an already established plantation forest is a standard operational activity and does not involve an activity or project that falls within the specified categories of forestry activities or projects subject to the requirements of the EIA Directive, as transposed and set out nationally in Schedule 5 Part 2 of the Planning and Development Regulations 2001, as amended, and in Regulation 13(2) of the Forestry Regulations 2017 (and wherein relevant national mandatory thresholds and criteria for EIA are also prescribed). The statement also asserts that an application for a licence to clear-fell and replant an established plantation forest does not constitute a change or extension of an earlier authorisation for that project.

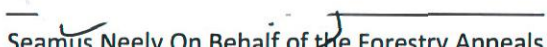
In the course of considering the appeal in this case it came to the attention of the FAC that a number of documents / reports, that formed part of the DAFM decision file in this case, had not been provided to the FAC, the appellant or the applicant. These documents (namely a copy of the submission from a member of the public of 3/01/20 to DAFM, a copy of the submission made to DAFM by Wexford County Council on 15/01/20 and an In Combination Statement) were provided to both the applicant and appellant by email and a period was allowed within which any observations / submissions (relating to the documents circulated) could be made to the FAC. In the event that period has now expired and no further submissions / observations have been received.

In considering the grounds of appeal, the FAC considered, in the first instance, the screening for appropriate assessment undertaken by the DAFM. The grounds of appeal do not identify any specific European sites, measures or effects of concern. Fifteen sites are identified within 15km from the proposal by the DAFM and the FAC confirmed this using information provided by the NPWS and EPA. The DAFM considered there was no requirement to extend the 15km zone in this instance and based on the nature, scale and location of the proposal the FAC concurred with this conclusion. The DAFM recorded other plans and projects, including forestry and non-forestry projects and plans, that were considered in relation to potential in-combination effects of the proposal. While the licence includes a number of conditions that relate to the protection of water quality and the environment generally, the FAC is satisfied that there are no measures included that relate to the avoidance or reduction of significant effects on a European site and that none were considered in the screening or were required to reach the conclusion. The FAC considered the scale, nature and location of the proposal, its separation from European sites and those sites conservation objectives, and the reasons provided by the DAFM and concurred with the conclusions provided. The FAC considered that the truncation of qualifying interests and special conservation interests in the documentation of the screening constituted an obvious clerical error and that there was no reason to conclude that it had any material impact on the decision. Based on the information before it the FAC is not satisfied that a serious or significant error or series of errors occurred when making the screening decision and that the proposal individually, or in combination with other plans or projects, is not likely to have any significant effect on any European site.

The FAC considered the contention that the proposed development should have been addressed in the context of the Environmental Impact Assessment (EIA) Directive. 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 are 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 Forestry Regulations 2017 (S.I. 191 of 2017), 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 decision before the FAC relates to the felling and subsequent replanting of 3.04 ha of commercial managed forest. The FAC concluded that the felling and replanting 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 not covered by national regulations and that screening for significant effects under the EIA Directive was not required in this case.

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal, and other submissions received. The FAC is not satisfied that a serious or significant error or a series of errors was made in making the decision and neither that the decision was made without complying with fair procedure. The FAC is thus affirming the decision of the Minister regarding licence WX08-FL0099 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,


Seamus Neely On Behalf of the Forestry Appeals Committee