



An Coiste um
Achomhairc
Foraoiseachta
Forestry
Appeals
Committee

[REDACTED]
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[REDACTED]

April 29th 2021.

FAC ref: FAC061/2020

Subject: Appeal in relation to Licence TFL00272619.

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

Felling Licence TFL00272619 was granted by the Department of Agriculture, Food and the Marine (DAFM) on January 23rd 2020.

Hearing

An oral hearing of appeal FAC061/2020 regarding the decision to issue the licence TFL00272619 was conducted by FAC on March 9th 2021.

Attendees:

FAC:	Mr Des Johnson (Chairperson) Mr John Evans, Mr Luke Sweetman, Mr Dan Molloy.
Administrative Secretary:	Mr Michael Ryan.
Applicant representatives:	[REDACTED]
DAFM Representatives:	Ms Eilish Kehoe, Mr Momme Reibisch.
Appellant:	[REDACTED]

An Coiste um Achomhairc
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Forestry Appeals Committee

Kilminchy Court,
Portlaoise,
Co Laois
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Decision

The FAC considered all of the documentation on the file including application details, processing of the application by the DAFM, the grounds of appeal, submissions made at oral hearing and all other submissions and has decided to affirm the decision of the Minister regarding Licence TFL00272619.

The proposal, for an area of 27.85ha in four plots, is for thinning in the years (2020 & 2023) and clear-felling in 2027. The proposed re-stock is 90% Sitka Spruce and 10% Additional Broadleaves to include existing broadleaves on the site. Plot 3 is bordered by a stream on the northern edge of the plot, Plot 2 is bordered by a stream to the west of the plot, both streams flow east before joining the River Shannon.

The applicant submitted an application pack which includes maps and a document titled Harvest Plan.

The DAFM referred the application to Roscommon County Council and the National Parks & Wildlife Service (NPWS) on January 29th 2019. The application was also referred to the DAFM Forest Service Archaeologist for comment.

Roscommon County Council responded on March 1st 2019 stating in summary.

- The owner of the site must ensure that all measures necessary are put in place such that the objectives of the WFD River Basin Management Plan 2018- 2021 are not compromised.
- All measures to protect water from sediment & phosphorus losses as outlined in the Environmental Requirements for Afforestation 2016 and in Felling and Reforestation policy documents must be applied effectively during tree felling & replanting at the sites.

The NPWS replied on May 23rd 2019 outside of the requested timeframe stating *Insufficient Information Provided*, and stated Information required by the Forest Harvesting and Environmental Guidelines (2000), Felling and Reforestation Policy (2017) and Potential Water Quality impacts on Lough Drumaharlow pNHA.

There is no further documented communication from the DAFM to the NPWS on file, however the NPWS replied on January 21st 2020 stating '*The Department acknowledges your further information submission and has no further observations on the above felling application*'.

The DAFM Archaeologist replied on July 11th 2019 stating (in summary),

- Forestry & Archaeological guidelines & Forest Harvest and Environmental guidelines should be adhered to.

- Demarcated areas highlighted on the map around Recorded Monuments should be excluded from the proposed works, observe exclusion zone of 20m from outer area of Monuments.
- Field inspection required by qualified Archaeological expert and plan prepared with Forester regarding extraction of trees from within exclusion zone with objective of protecting monuments.
- Particular caution regarding historic farmyards and in-fields so as to minimise damage.
- Exclusion zone should be fenced or marked and operational staff apprised of the location.
- Machinery not allowed to enter protected zones.
- No replanting within 20m of monuments zones, no new drains opened within 30m.
- Pedestrian access from monument to nearest forest track, if not there, minimum 4m wide.
- No replanting within 10m of any building associated with historic farmyards & 5m within infields.
- Any previously unrecorded site or artefact must be left undisturbed and relevant authorities notified, min exclusion 20m, preferably 100m until after investigation.

Information provided by the DAFM under Inspectorate certification states, the predominant soil type underlying the project area is highly modified peat and peaty podzols in nature. The slope is flat to moderate (<15%).

The DAFM carried out Appropriate Assessment (AA) screening of Natura 2000 sites within 15Km of the proposal, the screening comprised of two SAC and one SPA. Cuilcagh Anierin Uplands SAC 000854, Lough Arrow SAC 00001673 and Lough Arrow SPA 004050 were screened out. The reasons for the screening conclusion state, *the project is not directly connected with or necessary to the management of any European site. Furthermore, DAFM has determined that there is no likelihood of the project having any significant effect, either individually or in combination with other plans or projects, on this European site.* Overall conclusion - Screen out: *No likelihood of a significant effect on any European site and appropriate assessment not required.*

As part of the certification process the Forestry Inspector inserted the following conditions:

- Attached Archaeological Report to be strictly adhered to.
- ADBs to consist of Birch and Rowan.
- Standards for Felling and Reforestation 2019 apply.

The DAFM consulted the following agency websites as part of the In-combination report, Roscommon Co Council planning website listing domestic dwellings, sleeping pods, boat shed and change of use from residential property to education and resource. EPA website: Primary Effluent Emissions Point.

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DAFM's iForis Map Viewer was also consulted identifying various forestry related projects submitted or under evaluation, six felling licences and seven afforestation and forest road applications. The DAFM conclude *Individually, the project does not represent a source, or if so, no pathway for an adverse effect on any European site exists. Consequently, the DAFM deems that there is no potential for the project to contribute to any such affects, when considered in combination with other plans or projects.*

There is one appeal against the decision to grant the licence, in summary the grounds of appeal are as follows:

- The AA screening does not comply with the requirements of the law
- The FAC must carry out a *de novo* screening and, where necessary, an AA.
- It is merely necessary to determine that there may be a significant effect to trigger AA (Kelly v An Bord Pleanála)
- The FAC must make available records of assessments undertaken to the appellant
- Where a waterbody is concerned, it is necessary to examine the catchment map and state which catchment the proposed development is in.
- Where there is a turlough, it is necessary to show evidence that there is no groundwater connectivity.
- It is not appropriate at screening stage to take account of measures intended to avoid or reduce the harmful effects on a European site.
- Likely effects of all aspects of the operation must be considered in combination with other forestry management activities completed, commenced, permitted or proposed
- The FAC must fully comply with NPWS requirements.

The DAFM have provided a written statement in response to the grounds of appeal stating, the AA screening procedure relevant at the time was applied. The proposal was screened out using the Habitat Table 18Dec19 and the Bird Foraging Table 06 Jan 20. In combination assessment was carried out. All relevant AA screening information can be found on file.

The FAC held an oral hearing on March 9th 2021, all parties were invited to attend and participate. The FAC sat remotely and the DAFM and the applicant participated remotely. The appellant did not participate or attend.

At the hearing the DAFM set out processing procedures undergone in issuing the licence- that there were referrals to Roscommon Co Council and the NPWS on January 29th 2019. Roscommon Co Council replied on March 1st 2019 and the NPWS replied on May 23rd 2019. The application was also referred to the DAFM Forest Service, Archaeologist for comment.

██████████ on behalf of the applicant stated that it would be unfair to deny the licence based on conditions that were not attached to the licence at the time of the original application and that the applicant (his mother) should have been informed of any changes that may impact on the site.

██████████ Forestry consultant on behalf of the applicant stated, he has been involved in the management of the applicant's sites for the last fifteen years, that this is the 3rd thinning application applied for and they never encountered any issues before now. ██████████ also stated they have not encountered issues to date with the Local Authority and the family have a good reputation in the local community.

As part of FAC questioning, clarification was sought from the DAFM as to why on January 21st 2020, the NPWS replied to the DAFM stating, *the Department acknowledges your further information submission and has no further observations on the above Felling Application* while NPWS originally replied on May 23rd 2019 requesting a site map with further information relating to aquatic zones, buffer exclusion zone, maintenance areas and extraction routes, no further communications on this item other than that outlined are available to FAC. The DAFM stated the reply received from NPWS on May 23rd 2019 was outside of the allocated timeline, however, the Harvest Plan and other information requested was forwarded to the NPWS. The FAC asked the DAFM if any of the conditions attached to the licence were mitigation measures to avoid or reduce effects on any Natura 2000 sites, the DAFM stated that the conditions included a number of conditions that are standard in nature and that none were mitigation measures to protect Natura sites, that some conditions were attached to protect a pNHA but this was allowable and that all Natura 2000 sites had been screened out for possible effects for reasons of no hydrological connection and or distance or lack of suitable habitat within the project site. The DAFM were also asked by the FAC if there was merit in extending the in-combination report planning checks to Co Leitrim as the county border was geographically close. The DAFM Forestry Inspector stated that the in-combination report was carried out in Johnstown Castle, Wexford and that he could not comment as to why this had not taken place in this case.

In relation to conditions attached to the licence, the DAFM were asked if the Archaeological recommendations as outlined in the licence will be overseen for the purpose of compliance. The DAFM stated that where they become aware of issues of non-compliance, follow up action will be taken.

Prior to closing the meeting, the chairman invited comments from all of the parties. ██████████ on behalf of the applicant stated that ██████████ has always been guided by professional advice and has always complied with legislation where required to do so.

In addressing the grounds of appeal the FAC considered in the first instance the appellants contention that *'the appropriate assessment screening does not comply with the requirements of the law'*. The FAC considered, 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 and projects, having regard to the conservation objectives of that designated site. In this case the DAFM carried out stage 1 screening in line with S.I. 1477 of 2011 as amended and S.I. 191 of 2017 as amended and identified three Natura 2000 sites within 15Km of the proposed site and concluded that there was no likelihood of a significant effect on any European Site and AA was not required. The FAC consulted the EPA publicly accessible site and identified the same three sites.

The DAFM as part of the AA screening procedure considered each site individually listing the Conservation Objectives and Qualifying Interests and also listed reasons for their screening conclusions. The DAFM outlined their reasons for screening out as stated above.

As part of the in-combination report, the DAFM also considered other plans and projects within the area and concluded the project when considered in combination with other plans and projects will not give rise to the possibility of a significant effect on any Natura site. The FAC is satisfied that the procedures followed in the Stage 1 screening were consistent with the provisions of Article 6(3) of the Habitats Directive and finds no convincing reason to doubt the conclusions reached.

The FAC considered the appellants contention, where a waterbody is concerned, it is necessary to examine the catchment map and state which catchment the proposed development is in. The FAC in reviewing each plot location identified the relevant catchments in all cases for each site. Plots 2, 3 and 4 are in the Upper Shannon 26A Catchment and Shannon (Upper) _SC_020 Sub Catchment. Plot 1 is located in two catchments, Upper Shannon 26B, sub catchment Shannon (Upper) _SC_030 and Upper Shannon 26C, Sub Catchment Boyle _SC_030.

The FAC considered the appellants contention, 'where there is a turlough, it is necessary to show evidence that there is no groundwater connectivity'. No specific Turlough is referred to by the appellant.

The FAC noted that while there is no evidence on file relating to a response from the DAFM following the submission outlined from the NPWS on May 23rd 2019, the NPWS replied on January 21st 2021 stating, *The Department acknowledges your further information submission and has no further observations on the above felling application*. The FAC are satisfied the observations outlined by the NPWS on May 23rd have been addressed by the DAFM. The FAC are also satisfied that there is no possibility of any impact on water courses adjacent to the site in compliance with the standard measures outlined in Forest and Water Quality guidelines.

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 satisfied that there is no serious or significant error or series of errors in making the decision and the decision was made in line with fair procedures.

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



Dan Molloy, on behalf of FAC.