



An Coiste um Achomhairc
Foraoiseachta

Forestry Appeals Committee

07 May 2021

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

FAC ref: 649/20 & 657/20

Subject: Appeal in relation to felling licence TFL00408519

Dear [REDACTED],

I refer to the appeals to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine (DAFM) in respect of licence TFL00408519.

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

Licence TFL00408519 was granted by the DAFM on 12 August 2020.

Hearing

An oral hearing of appeals 657/20 & 649/20 was conducted by the FAC on 20 April 2021.

Attendees:

FAC Members:

Mr Des Johnson (Chairperson), Mr Luke Sweetman, Mr Dan Molloy & Mr Pat Coman

Secretary to the FAC:

Mr Michael Ryan

DAFM representatives:

Mr Momme Reibisch & Ms Eilish Kehoe

Appellant*:

[REDACTED]

Applicant representative:

[REDACTED]

[REDACTED]

Decision

The Forestry Appeals Committee (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 the Oral Hearing and all submissions/observations, before deciding to vary the decision to grant the Licence (TFL 00408519).

The proposal is for clearfelling, thinning and restocking of a stated site area of 29.88ha (in 7 plots) at Tullaghan, Grangemore, Co. Roscommon. Trees to be felled are Sitka spruce and Norway spruce. Proposed restocking is with Sitka spruce (80%), Broadleaves (10%) and 10% open space is provided

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for. Proposed clearfell would be for years 2020, 2024 & 2029, with thinning in 2020. The application documentation includes a Reforestation Map showing areas of Sitka Spruce, Mixed Broadleaves, Open Space, Hedgerows, Archaeology, and Cultivation direction.

The Inspector's Certification states that soils are predominantly highly modified peat and peaty podzols, surface and groundwater gleys. The slope is stated to be flat to moderate. The project lands are crossed by/adjoin an aquatic zone. The site is not acid sensitive or fisheries sensitive. It is not within a Local Authority designated water scheme and there are no Freshwater Pearl Mussel populations affected. A screening for Appropriate Assessment is carried out for Natura 2000 sites within a 15km radius. The following sites are screened out for Stage 2 Appropriate Assessment - Bellanagare Bog SAC, Bellanagare Bog SPA, Bricklieve Mountains and Keishcorran SAC, Callow Bog SAC, Cloonshanville Bog SAC, Lough Arrow SAC, Lough Arrow SPA, Lough Gara SPA and Tullaghanrock Bog SAC. Reasons are given for the screening conclusion including the downstream location of the project lands, absence of hydrological connectivity, the unsuitability of the project area for any species listed as qualifying interests for the Natura 2000 site and separation distance. In respect of the Bellanagare Bog SPA it is recorded that this is not an overwintering site for the Greenland White-fronted Goose and that the Bellanagare Bog population have abandoned the SPA. The percentage forest area licensed for clearfell and thinning operations within 5km of the site is 5.03%. An In-combination report is considered. This refers to projects in the River Sub Basin Boyle_010 and Granny_010. Non-forestry projects include dwellings, slatted shed, bulk storage tanks etc. Forestry related projects (since 2017) listed are afforestation (22), roads (11), private felling (23), and Coillte felling (1). The River Sub Basin Boyle_010 has 7% forest cover and the River Sub Basin Granny_010 has 25% forest cover.

The DAFM referred the application to Roscommon County Council, National Parks and Wildlife Service (NPWS) and for an internal archaeology report. The County Council responded that there are several watercourses on the site. Soils are poorly drained and cutover bog. Recommendations are made in respect of silt traps, extraction routes, and water quality protection. The replanting should provide for a 10m setback from public roads, 10m setback from the EPA river and 5m setback from relevant watercourses. The NPWS response states that the application provides insufficient information in respect of nature conservation to allow for proper assessment of potential impacts on protected habitats and species. The application does not provide the information required as detailed in the Forest and Environmental Guidelines, and does not show aquatic zones and important habitats, buffer and exclusion zones within the felling coupe, existing and planned road network, location of machine maintenance, refuelling, repair etc, machine routes and extraction routes, treelines, hedgerows and coupes of deciduous trees which preceded afforestation, watercourses. The application does not provide the information required and outlined in the Felling and Reforestation Policy. A large area on the south side of plot 081 is planted on peat and it is not clear if this is to be replanted. It is recommended that this area is not replanted. Appropriate setback distances for hedgerows/treelines are not identified. Appropriate setback distances for watercourses are not identified. A watercourse on the northern boundary of plot 081 is not identified. An internal archaeologist's report states that the nearest monuments are a ringfort 40m to the south of Plot 1 and a large ringfort c.80m to the south of Plot 2. Historic maps show a farmyard with attached infields within Plot 6. Recommendations include adherence to Forestry and Archaeology Guidelines, particular caution to be taken during felling at the site of the historic farmyard and its immediate vicinity, any unrecorded site discovered must be left undisturbed and relevant authorities notified. A minimum exclusion zone of 20m but



preferably 100m or more, must be created until proper investigation. A 10m wide unplanted buffer zone/setback should be provided around any upstanding remains of the historic farm buildings and a 5m buffer around any infields.

The licence was issued on 12.08.2020. It is subject to standard conditions with additional conditions relating to adherence to all Guidelines and Code of Best Forest Practice, protection of the public road network, and archaeological conditions.

There are two appeals against the decision to grant the licence. In summary, the grounds of appeal contend that the proposed development is screened in and no Appropriate Assessment according to EU and Irish law was carried out. There is a breach of Article 4(3) of the EIA Directive. This is a class of development covered under Annex II of the EIA Directive. A Number of criteria set out in Annex III do not form part of the screening and have not been taken into account. The DAFM failed to carry out an adequate EIA screening of the proposed development. There is no foundation for the conclusions reached. There is an error in law. The proposal was only desk assessed. The afforestation of these lands was carried out without any EIA screening, contrary to the EIA Directive. There should be retrospective assessment for EIA carried out. Part of the site is within an NHA. There is no evidence that all forest roads constructed on these lands were subject to EIA or AA screening. There is inadequate consideration of feedback from a Consultation Body. The licence and associated operations threaten the achievement of the objectives set for the underlying waterbody under the River Basin Management Plan for Ireland 2018-2021. Clearfelling has the capacity to significantly impact on water quality. The Stage 1 Appropriate Assessment conclusion is not legally valid. The licence should contain a condition that plans and works must be inspected by the Forestry Service prior to, during and post works to ensure compliance. There should be a standard condition requiring notification to the Minister at the commencement and conclusion of operations. The Harvest Plan is not consistent with the requirements of the Interim Standard for Felling and Reforestation. There should be stringent and enforceable conditions requiring notification to appropriate bodies, groups and the public in the case of the spraying of chemicals. Licence conditions do not provide for a system of strict protection for animal species listed in Annex IV of the Habitats Directive. Licence conditions do not provide for a system of protection for wild birds during the period of breeding and rearing consistent with Article V of the Birds Directive.

In response, the DAFM state that the Appropriate Assessment screening procedure at the time was applied. The Habitats Table (Dec 2019) and Birds Foraging Table (Jan 2020) were referenced. An in-combination assessment was carried out. The proposed development does not constitute a class of development covered by the EIA Directive or the associated transposing Regulations. The paperwork submitted as part of the application was reviewed by the Inspector and deemed sufficient to reach a decision to approve the licence with conditions. The applicant has contacted the NPWS directly regarding works carried out within the NHA.

An Oral Hearing was convened on 20th April 2021 and all parties were invited to attend. The FAC sat remotely. The applicant's representative, the DAFM and one appellant participated remotely. The second appellant did not attend. The DAFM detailed the procedures followed leading to the making

of the decision to grant the licence. The Appropriate Assessment screening included examination of the DAFM Birds Table and the conclusions reached had been examined and passed by an internal ecologist. In response to FAC questions, the DAFM stated that the NPWS referral response appeared to be a generic submission and was not entirely correct in this case. Much of the information referred to by the NPWS had, in fact, been submitted with the application. The DAFM understood that the applicant and the NPWS had subsequently discussed issues relating to Plot 7 and implications for the Tullaghan Bog NHA. There would be no planting in the NHA. The appellant stated that there was no formal agreement on file in respect of any outcome in the consultations between the applicant and the NPWS. The proposed development involved 'notifiable activities' within the NHA and this required separate consent from the Minister. If part of Plot 7 was to be left unstocked, the appellant queried if this would be regarded as open space and, as such, bring the overall proposal within the scope of the EIA Directive on the basis of deforestation and a change in land use. It was not clear what consideration had been given to impacts on water quality arising from the intended use of insecticides and herbicides, and how the recommendations of the County Council had been addressed. There was no condition on the licence providing for the strict protection of wild bird species. There are 3 houses adjacent to the site (2 less than 60m) and it was not clear how these would be protected. The Harvest Plan did not show ESB cables or stacking areas. There is a significant watercourse not shown. Only one hedgerow is indicated and no setback is shown for this. Other hedgerows were not identified. Lough Gara SPA has direct hydrological connection and there is potential for impacts on groundwater quality and the qualifying interests of this designated site. The in-combination report did not account for the extent of other forestry projects in the vicinity. The applicant's representative outlined the background to the application. He confirmed that contact had been made with the NPWS in regard to Tullaghan Bog NHA and stated that agreement had been reached to leave an area of Plot 7 unplanted. There is a watercourse along the northern boundary of the southern plot and there may be some drains leading into this stream. This watercourse is marked on the application documents. There may be other hedgerows on the site and these would be subject to the normal requirements during felling and restocking. Responding to questions from the FAC, the DAFM accepted that any agreement between the applicant and the NPWS would not be addressed by any of the conditions on the licence but that the Inspector had been informed by both the applicant and the NPWS of the consultations. The DAFM confirmed that there would be a mandatory requirement to protect any watercourse on the site. The risk of colonisation of the NHA with Sitka spruce had not been considered, but the DAFM did not accept that the proposed development would give rise to any increased risk compared with the existing forest. The applicant stated that the exact area to be set aside adjacent to the NHA would be subject to further discussion with the NPWS but it may encroach further north into an area currently covered by healthy plantation. It could constitute 30-50% of the plot.

At the outset of its deliberations, the FAC further examined the application documentation. The document entitled 'Harvest Plan' includes a drawing showing the plots being applied for with haulage direction, property boundaries, existing forest roads and public roads, a single hedgerow crossing Plot 6, stacking areas in Plots 2, 3, 5 & 6, ESB lines, archaeological sites adjoining the project lands, extraction directions and a watercourse to the north of Plot 5. A 'Reforestation Plan' submitted delineates areas of mixed Broadleaves, open space, and Sitka spruce, cultivation directions and access. The FAC noted that this information, together with standard application documentation, was available to the DAFM in processing the case and making the decision.



In addressing the written grounds of appeal, the FAC firstly considered the procedures followed by the DAFM in screening for Appropriate Assessment. The DAFM considered Natura 2000 sites within a 15km radius and the FAC finds no reason to consider that this radius should be extended in this case. Nine designated sites were considered with qualifying interests and conservation objectives listed and an examination of the potential for effects arising from the proposed development examined. All sites were screened out and reasons provided for this conclusion as detailed earlier in this letter. In combination projects were considered, underlying waterbodies listed together with the percentage forest cover for the two Sub Basins concerned - River Sub Basin Boyle_010 and Granny_010. The conclusion reached was that the proposed development, individually or in combination with other plans or projects, would not have a significant effect on any Natura 2000 site. The FAC notes that the Lough Gara SPA is c.6533m downstream with qualifying interests of the Greenland White-fronted Goose and the Whooper Swan and that the reason for screening this site out for Stage 2 Appropriate Assessment was separation distance. The Bellanagare Bog SPA is screened out for reason that this is not an overwintering site for the Greenland White-fronted Goose and that the Bellanagare Bog population have abandoned the SPA. Based on the information before it, the FAC concludes that there is no reason to consider that the procedures followed are not consistent with the requirements of Article 6(3) of the Habitats Directive or that the conclusions reached are not sound.

It is contended that the decision is in breach of the EIA Directive. The Proposed development is for felling and restocking on a stated site area of 29.88ha. This is part of a forestry management project with no change in land use. The clearfelling is to take place in three stages up to 2029. The FAC noted that felling and restocking is not a class of development included in either Annex I or Annex II of the EIA Directive. Furthermore, the proposed development does not involve any works which, by themselves, would constitute a class of development covered by the EIA Directive. In these circumstances, the FAC concluded that the decision is not in breach of the provisions of the EIA Directive.

The Tullaghan Bog NHA adjoins to the south of Plot 7. The qualifying interest for this NHA is Peatland – raised bog including high bog and cutover bog. The NPWS record that the site is of considerable conservation significance. The DAFM state that there would be no planting within the NHA, the appellant states that part of the site (Plot 7) lies within the NHA and, at the Oral Hearing evidence was presented that consultations were taking place between the applicant and the NPWS in respect to the extent of restocking on Plot 7. Ortho imagery, on the publicly available Forest Licence Viewer, shows existing open area and areas of sparse woodland in the southern section of the plot. The FAC noted that any agreement between the applicant and NPWS would be outside the terms of the licence granted. Furthermore, it is not clear to the FAC if the proposed development would involve any notifiable activity in the NHA which would require the consent of the Minister under section 19(1) of the Wildlife (Amendment) Act 2000. In these circumstances, the FAC concluded that there was a significant error in the making of the decision by the DAFM as the terms of the licence granted do not indicate what is permitted in Plot 7 in a clear, precise and enforceable manner.

It is contended that the licence and associated operations threaten the achievement of the objectives set for the underlying waterbody under the River Basin Management Plan for Ireland 2018-2021 and

that clearfelling has the capacity to significantly impact on water quality. No specific evidence is submitted in support of this contention. Based on the information before it, the FAC finds no reason to conclude that the development, as licensed, would have any significant effect on water quality or threaten the achievement of the objectives for the underlying waterbodies.

Compliance and enforcement of the terms of a licence are matters for the DAFM and these functions are supported by legislative powers. The FAC finds no reason to include any additional condition in this regard. The 'Harvest Plan' is essentially a roadmap for the operators carrying out the development, and who must comply in full with the terms of the licence. Spraying of chemicals is controlled through Statutory Instruments and there is no legal requirement to inform adjoining landowners of the intention to spray.

It is contended that the licence conditions do not provide for a system of strict protection for animal species listed in Annex IV of the Habitats Directive or for the protection of species of wild birds. No specific information is submitted to indicate the presence of species of wild birds or Annex IV species in their natural habitat on the project lands, or any reasons why the proposed development would be likely to adversely impact on their protection. In these circumstances the FAC finds no reason to attach the conditions requested by the appellant.

The FAC concluded that there was a serious and significant error in the making of the decision as the terms of the licence granted do not indicate what is permitted in Plot 7 in a clear, precise and enforceable manner. In these circumstances, the FAC decided to vary the licence by requiring the attachment of the following condition to the licence:

Plot 7 (as indicated on the submitted 'Harvest Plan') shall be omitted from the terms of this licence and shall be the subject of a separate application to the DAFM.

Reason: To allow for clear and precise proposals to be made for this plot, having regard to the proximity to the Tullaghan Bog NHA, and to allow for consideration by the DAFM of any such proposals.

Yours Sincerely

A large black rectangular redaction box covering the signature of Pat Coman.

Pat Coman, on behalf of the FAC