



An Coiste um
Achomhairc
Foraoiseachta
Forestry
Appeals
Committee

[REDACTED]
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May 7th 2021

FAC ref: 765/2020.

Subject: appeal in relation to Licence GY04-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

Felling Licence GY04-FL0099 was granted by the Department of Agriculture, Food and the Marine (DAFM) on August 28th 2020.

Hearing

An oral hearing of appeal FAC765/2020 regarding the decision to issue the licence GY04-FL0099 was conducted by FAC on March 2nd, 2021.

Attendees:

FAC: Mr Des Johnson (Chairperson) Mr Pat Coman,
Mr Luke Sweetman, Mr Dan Molloy.

Administrative Secretary: Mr Michael Ryan.

Applicant representatives: [REDACTED]

DAFM Representatives: Ms Eilish Kehoe, Anthony Dunbar.

Appellant: [REDACTED]

An Coiste um Achomhairc
Foraoiseachta
Forestry Appeals Committee

Kilminchy Court,
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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 the Oral Hearing and all other submissions, before deciding to affirm the decision of the Minister regarding Licence GY04-FL0099.

The proposal is for the felling and re planting of 8.03ha in Castlekelly, Kilmore, (KillianBay) Co Galway. The site in one section, is planted with 100% Sitka Spruce, the proposed re stock is 95% Sitka Spruce, 5% other broadleaves with .04 hectares reserved for open space. In line with details as provided by the DAFM, the soil type is Basin Peats and Blanket Peats, the slope is predominately moderate 0-15% and the project is located in the Shannon Catchment (100%) the Suck_SC_050 (100%) Sub-Catchment, the Shiven (South) _060 (100%) Waterbody.

There is a stream flowing to the north east approximately 130 metres from the outer edge of the site, continuing approximately 2.5km further in a south east direction before joining the River Suck. There is also a stream on the northern end of the site which connects with the stream to the north of the site.

The DAFM referred the application to Galway County Council, no reply is recorded..

The Applicant submitted an application pack which includes Maps, Appropriate Assessment (AA) Pre Screening Report, Natura Impact Statement (NIS) and a document titled Harvest Plan. The Applicant also submitted a Natura Impact Statement (NIS) dated July 10th 2020 and stated as part of the introductory section that the NIS was not requested by DAFM but submitted based on results of a pre-screening exercise. The project site consists of mature conifer forest on mature cutover bog, mostly basin peats with some blanket peats, planted in 1983. A forest road bisects the site and the west and southern side boundaries are bordered by a local minor road. There are no aquatic zones adjacent to or within the site and the site is not hydrologically connected to any European site. A drain lies to the North East boundary of the site and this is potentially linked to another drain which flows into the River Suck Callows SPA. The NIS states *'these drains are on flat ground and there is little or no potential for them to carry significant amounts of sediment or nutrient. No fertiliser required and no application of herbicide proposed at this time'*.

The AA Pre Screening Report presented by the applicant screened out sixteen Natura 2000 sites and screening in one site, Ballygar (Aghrane) Bog SAC. The NIS looked at the potential impacts on the screened in Natura 2000 site and proposes mitigation measures under Section 3 of the NIS. The applicant also completed an in-combination report as part of the NIS.

The DAFM carried out an AA Screening and determination report and an AA Determination Report (AAD) having regard to the NIS and its findings. The AA screening and determination report identified eighteen Natura 2000 sites within a 15km radius of the project site. The following sites were screened out for Stage 2 Appropriate Assessment (AA) for reasons of the absence of a direct upstream hydrological connection and subsequent lack of any pathway, hydrological or otherwise- Aughrim (Aghrane) Bog SAC, Lisduff Turlough SAC, Camderry Bog SAC, Four Roads Turlough SAC, Ballinturly Turlough SAC, Curraghlahanagh Bog SAC, Carrownagappul Bog SAC, Lough Croan Turlough SAC, Lough Lurgeen Bog/Glenamaddy Turlough SAC, Lisnageeragh Bog and Ballinastack Turlough SAC, Shankill West Bog SAC, Kilsallagh Bog SAC, Killeglan Grassland SAC.

The following sites were screened out due to separation distance between the Natura 2000 site and the project site, River Suck Callows SPA, Four Roads Turlough SPA and, Lough Croan Turlough SPA. Lough Funshinagh SAC was screened out due to the location of the project area within a separate water body catchment to that containing the Natura site with no upstream connection and the subsequent lack of any pathway, hydrological or otherwise. Ballygar (Aghrane) Bog SAC was screened in stating *Possible effect due to the location of the project within the Natura site.*

The DAFM consulted the following agency websites as part of the In-combination report- Galway County Council-Department of Housing & Planning & local Gov website listing Domestic Dwellings, Office Development, Slatted Bovine accommodation, GAA Pitches, Sawmill and Forest Access Road. The DAFM also consulted internal records, four Forest Licences at approval and preapproval stage, one forest road at preapproval stage, five private felling approvals (2017 – 2018), seven Coillte felling projects planned and approved (2018- 2020).

The DAFM completed an AAD on Ballygar (Aghrane) Bog SAC and stated *'based on best scientific knowledge in the field and the European Communities (Birds & Natural Habitats) Regulations 2011 (as amended) and the Forestry Regulations 2017, as amended, and Article 6(3) of the Habitats Directive, that the project proposed under GY04-FL0099, individually or in combination with other plans or projects, will not adversely affect the integrity of any of the aforementioned European Sites, having regard to their conservation objectives, providing the following mitigation is implemented'* and have inserted mitigation measures (A-B as per AAD) in relation to the protection of active and degraded raised bogs, and conditions (C-I as per AAD) in relation to site preparation due to the peaty nature of soil. The DAFM also stated the proposed works shall adhere to Environmental Requirements for Afforestation, December 2016 (DAFM, 2016), Forestry Standards Manual (DAFM, 2015), Forest Harvesting & the Environment Guidelines (DAFM, 2000), Felling & Reforestation Standards (v. Oct. 2019) (see Forest Service Circular 14 / 2019), Felling & Reforestation Policy (DAFM, 2017).

The DAFM also state as the basis for their determination, that the gentle sloping site on peat soils connects hydrologically with an aquatic zone approximately 100m outside of the site and may be directly linked by old drains crossing the site and there is therefore a hydrological connection with the River Suck Callows SPA but due to the nature and scale of the activity and the insensitivity of the features, there will be no adverse impact. While the forest site marginally overlaps the north end of Ballygar (Aghrane) SAC, this part of the SAC consists of forest rather than designated active and degraded raised bogs. Mitigation measures specified will ensure no adverse impacts on the integrity of the listed European site.

There is one appeal against the decision to grant the licence. In summary the grounds of appeal contend:

- There was a breach of Regulation 21(1) of the Forestry Regulations
- The Forest Service failed to supply, in an appropriate timeframe, relevant records that informed the decision
- There is a breach of Article 4(3) of the EIA Directive as there was no screening for EIA. A number of criteria set out in Annex III have not been considered.
- There is a breach of Article 4(4) of the EIA Directive. On the same date as this application was made a further 3 applications were made for the same FMU totalling 24.96ha. The application does not cover the whole project. Project splitting is not permitted.

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- The licence and associated operations threaten the achievement of the objectives set for the underlying waterbody as set under the River Basin Management Plan
- The potential for significant environmental impact on a Nationally designated site has not been fully considered
- The Stage 1 AA conclusion is not legally valid. A Natura 2000 site with aquatic interests that has direct hydrological connectivity has been screened out. The Natura site lists forestry as a low level threat/pressure
- The mitigation measures in the AA Determination are not precise enough
- The Stage 1 screening did not consider potential impact on SAC 001913
- The opinion of the general public was not sought under Article 6(3) of the Habitats Directive
- The Harvest Plan is not consistent with the requirements of the Interim Standard for Felling and Reforestation
- Licence conditions do not provide for the protection of all wild birds during breeding and rearing season
- Licence conditions do not provide for the strict protection of Annex IV species
- There should be a standard condition requiring the licensee to notify the Minister at the commencement and conclusion of operations
- There should be a condition requiring the FS to inspect plans and works prior to, during and post works to ensure compliance
- There should be stringent and enforceable conditions regarding notification of appropriate bodies, groups and the public of the spraying of chemicals

The DAFM have provided a written statement in response to the grounds of appeal and have stated that their decision was issued in accordance with procedures S.I. 191/2017 and the 2014 Forestry Act. The written statement also states the version of AA procedure applied is that of v.05Nov19.

In summary

DAFM notes the submission by the Appellant of 351 felling licence applications on Jan 3rd, 2020. A record of information provided to the appellant in relation to the original application along with associated correspondence in relation to same is included on file.

Article 4(4) of the EIA Directive requires that where a category of project listed in Annex II of the Directive or in the national transposing legislation (i.e. where not otherwise automatically required by nationally prescribed thresholds or criteria) is required to be subject to a determination as to whether a sub-threshold EIA needs to be carried out or not, the applicant is required to provide information on the characteristics of the project and its likely significant effects on the environment. A detailed list of information to be provided is specified in Annex IIA of the Directive (as transposed by Schedule 1 of the Forestry Regulations 2017) and includes, amongst other things, a description of the physical characteristics of the whole project. However, because the standard operational activities of clear-felling and replanting an already established forest area are not so categorised either in Annex II of the Directive or in the national transposing legislation (and where the legislature had the discretion to include such activities had it wished to do so), a screening assessment for sub-threshold EIA did not need to be carried out by the Department in this case and thus Article 4(4) of the Directive is not applicable. Were it the case (which it is not) that the application for a felling licence project involved

an activity or project falling within the specified categories of forestry activities or projects which are subject to the requirements of the EIA Directive, then in the opinion of the Department the outputs from the Forest Management Unit (FMU) planning process undertaken by Coillte and any resultant Business Area Unit (BAU) strategic plan would still not be a material consideration in the Department's assessment inter alia of the potential environmental effect of the application because standard operational activities for clear felling and replanting are not categorised in Annex 11 of the Directive or in national transposing legislation.

The DAFM applies a wide range of checks and balances during its evaluation of felling licence applications in relation to the protection of water, as set out in the DAFM document *Forests & Water: Achieving Objectives under Ireland's River Basin Management Plan 2018-2021* (2018). Critically, any felling licence issued is conditional on adherence to the Interim Standards for Felling and Reforestation (DAFM, 2019), which set out a wide range of operational measures to prevent direct and indirect impact on water quality arising from the operation. The DAFM is fully informed of its responsibilities regarding the achievement of objectives under the Water Framework Directive (WFD).

Ballygar Bog NHA is separated from the felling and reforestation project, GY04-FL0099, by a public third class road running in a north west to south east direction. The forest area licenced for felling is comprised of WD4 (Sitka spruce) Conifer forest and is outside the boundary of the designated NHA. As such the felling licence application was not referred to the NPWS. Licence application GY04-FL0099 was referred to the Local Authority as per current practice and procedures. The forest area licenced for felling and reforestation was planted in 1983. The Ballygar Bog NHA was designated in November 2003. The NPWS site synopsis for the Ballygar Bog NHA notes that forestry and agricultural reclamation result in drainage of the site, which leads to habitat loss and damage to the bog's hydrological status and pose a continuing threat to its viability. The operations licenced as GY04-FL0099 do not involve afforestation of the NHA nor does the licence operations occur within the bounds of the designated bog area. The NPWS site synopsis document for the NHA does not specify felling and reforestation activities as being a threat. Finally, the measures described in the application documentation, together with adherence to relevant environmental guidelines/requirements/standards and to the site-specific mitigation measures set out in the AA Determination and granted licence ensure that the proposed felling and reforestation project GY04-FL0099 will not result in any adverse effect of the NHA. DAFM submits that the granting of GY04-FL0099 is consistent with national forest policy.

The AA screening carried out in respect of GY04-FL0099 was consistent with DAFM procedures. The related AA determination qualifies any hydrological connections to European sites in terms of the size and scale of the licenced project.

Specific conditions were issued on the licence in respect of mitigations identified in the AA Determination for the granted licence together with adherence to relevant environmental guidelines/requirements/standards.

The DAFM carried out Appropriate Assessment of potential impacts on the likely significant effects of the activity / project on those European sites 'screened in' and made certain, based on best scientific knowledge and the European Communities (Birds & Natural Habitats) Regulations 2011 (as amended) and the Forestry Regulations 2017, as amended, and Article 6(3) of the Habitats Directive, that the project proposed under GY04-FL0099, individually or in combination with other plans or projects, will not adversely affect the integrity of any European Sites, having regard to their conservation objectives.

It was concluded by DAFM that the proposed felling and reforestation, with mitigation measures set out in Section 4 of the AA determination, will itself (i.e. individually) not result in any adverse effect on the Ballygar (Aghrane) Bog SAC IE0002199 and associated Qualifying Interests and Conservation Objectives. There is therefore no potential for the proposed works to contribute to any cumulative adverse effects on this European site when considered in-combination with other plans and projects.

Regarding opportunities for public participation in the decision-making process around applications for felling licences, under Part 6 of the Forestry Regulations 2017 (S.I. No. 191 of 2017) where the Minister for Agriculture, Food and the Marine receives such an application, he or she is required amongst things to publish a notice of the application and inform the public that any person may make a submission or observation in writing concerning the application to the Minister within 30 days from the date of publication of that notice. The notification of such felling licence applications and details of the arrangements for public participation are published and readily accessible on the Department's website. In the making of a submission or observation concerning such applications, this includes the opportunity for members of the public to make a submission or observation on the likely effect on the environment of the proposed felling activity.

The DAFM had considered the application and associated information as submitted by the applicant in support of the granted licence and deemed this information as meeting DAFM requirements.

It's a principle of law that unless the grant of a first statutory licence, permit, permission, lease or consent expressly exempts the holder thereof of any obligation to obtain a second licence, permit, permission, lease or consent required or to adhere to any other restrictions on the timing of activities or similar where such is set out by statute elsewhere, those other obligations and restrictions apply.

Site-specific measures prescribed by the DAFM to mitigate against impacts on the Special Conservation Interests and Qualifying interests of the screened-in European site were identified in the AA Determination documents. The mitigations ensure that the proposed project itself (i.e. individually) will not prevent or obstruct the Special Conservation Interests or Qualifying Interests reaching favourable conservation status. Specific conditions were attached to the licence in respect of mitigations identified in the AA Determination. The measures described in the application documentation, together with adherence to relevant environmental guidelines/requirements/standards and to the site-specific mitigation measures set out in the AA Determination and granted licence ensure that the proposed felling and reforestation project GY04-FL0099 will not result in any adverse effect on any European Site.

In this instance, a commencement/conclusion notice in respect of the proposed project was considered not warranted by the DAFM.

Mandatory field inspection in respect of the proposed project is considered not warranted by the DAFM.

The use of plant protection products (PPPs) in Ireland is governed by Statutory Instrument 155 of 2012 and Statutory Instrument 159 of 2012. Both of these S.I.s are based on, and give effect to, EU legislation on PPPs - respectively Directive 2009/128/EC (concerning the sustainable use of pesticides) and Regulation (EC) No 1107/2009 (concerning the placing of plant protection products on the market). Users of PPPs shall apply the principles of Good Plant Protection Practice (GPPP), as provided for in S.I. 155 of 2012. These are published by the DAFM and provide the basis for the proper and appropriate use of these products.

The FAC held an oral hearing on March 2nd, 2021, and all parties were invited to attend and participate. The FAC sat remotely, the DAFM and the applicant participated remotely. The appellant did not attend.

At the hearing the DAFM set out processing procedures undergone in issuing the licence, that the application was desk based and there were referrals to Galway County Council- no response received. The DAFM also stated the application does not comprise of deforestation. The DAFM confirmed that the AAD was reviewed by an independent ecologist and all of the mitigations were reflected on the licence.

As part of FAC questioning, the DAFM were asked to go through condition (I) of the licence, the FAC also sought clarification from the DAFM of their reasons for screening out River Suck Callows SPA, the DAFM stated that River Suck Callows was screened out for reasons of separation distance from the site and been outside the foraging range.

The applicant's representatives stated that they carried out a Natura Impact Statement (NIS) and that there is one drain on flat ground to the north end of the site. He also stated there is no change of land use in relation to the application, that the site is walked before harvest by a Coillte rep with the contractor and spraying on the site will be applied by spot spraying only. The applicant was asked by the FAC if the NIS was requested or submitted without request and if there is a division between Ballygar (Aghrane) Bog SAC and the site GY04-FL0099. The applicant stated the NIS was not requested by the DAFM and that there is a road between Ballygar (Aghrane) Bog and the site. The FAC sought further clarification from the applicant in relation to the drain on the north end of the site- the applicant stated the drain is small and unlikely to have the ability to carry sediment.

In addressing the grounds of appeal, the FAC firstly considered the contention that the proposed development should have been addressed in the context of the EIA Directive. The EU 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 (nor clear-felling) 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 I(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 FAC concludes that the felling and subsequent replanting, as part of a forestry operation, with no change in land use, does not fall within the classes referred to in the Directive, and similarly are not covered in the Irish Regulations (S.I. No. 191 of 2017). The FAC considers the licence issued is for felling and replanting of 8.03ha and does not consent to any change of land use. As such the FAC concluded that there is no breach of any of the provisions of the EIA Directive.

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 or projects, having regard to the conservation objectives of that designated site. In this case the DAFM undertook AA screening in relation to eighteen Natura 2000 sites, seventeen of the sites were screened out and it was determined one of the sites, Ballygar (Aughrim) Bog SAC required AA. The DAFM

completed an AAD on August 24th 2020 on the likely significant implications and effects of the project on Ballygar (Aughrim) Bog SAC and took into account, information submitted by the applicant, iForis including GIS MapViewer, supporting documentation in-combination with other plans or projects that may adversely affect the integrity of the European site and the Natura Impact Statement provided by the Applicant. The DAFM stated, based on best scientific knowledge in the field and the European Communities (Birds & Natural Habitats) Regulations 2011 (as amended) and the Forestry Regulations 2017, as amended, and Article 6(3) of the Habitats Directive, that the project proposed under GY04-FL0099, individually or in combination with other plans or projects, will not adversely affect the integrity of any of the aforementioned European Sites, having regard to their conservation objectives, provided the mitigation measures outlined are implemented. The FAC are satisfied the mitigation measures outlined in the AAD report, which were incorporated into the felling licence as conditions, will protect Ballygar (Aughrim) Bog SAC and will not adversely affect the integrity of the site having regard to its conservation interests.

The FAC considered the appellants contention that the licence and associated operations may threaten the objectives of the waterbodies under the River Basin Management Plan. The FAC concluded there is no convincing evidence that the licence and associated operations would threaten the achievement of the objectives for the underlying waterbody as set out in the River Basin Management Plan having regard to the nature and scale of the proposed development and the conditions attached in the licence (A,I,J,K,L,M,N,O,P) designed to protect water quality. The AAD states *'the site connects hydrologically with the River Suck Callows but due to the nature and scale of the activity, and the insensitivity of the features, there will be no adverse impacts. The forest site marginally overlaps with the northermost end of Ballygar (Aghrane) Bog SAC. This part of the SAC consists of forest rather than the designated, active and degraded raised bogs. Mitigation measures specified to protect the aquatic zone and avoid areas of open bog will therefore ensure no adverse impacts on the integrity of the listed European site. Therefore based on objective information, no reasonable scientific doubt remains as to the absence of any adverse affect on the integrity of any European site'*. Based on the information before it, the FAC finds no reason to conclude that this determination is incorrect.

The FAC notes the appellant's contention for the potential of a significant environmental impact on a nationally designated site has not been fully considered. The appellant has not indicated the nationally designated site referred to, however the DAFM carried out AA screening on eighteen European sites and as a result, one site Ballygar (Aghrane) Bog SAC was referred for Appropriate Assessment and reviewed by a DAFM Ecologist in conjunction with the Natura Impact Statement submitted by the Applicant. The SAC overlaps the Ballygar Bog NHA at its most proximate to the proposal site and the mitigations afforded through the licence will also ensure no adverse effects on the NHA. Regards Aughrim Bog NHA to the north of the proposal, again the FAC is satisfied the conditions of the licence ensure there will be no adverse effects on the NHA.

The appellant contends that Stage 1 AA conclusion is not legally valid. A Natura 2000 site with aquatic interests that has direct hydrological connectivity has been screened out. The Natura site lists forestry as a low level threat/pressure. The FAC recognises that while a stream exists on relatively flat ground at the northern end of the site, hydrologically connected at a distance of approximately 130m from the outer edge of the site to another stream flowing in a south easterly direction, the FAC are satisfied the River Suck Callows SPA will be protected as a result of the measures attached to the licence.

The FAC have reviewed the appellant's contention that the mitigation measures in the AAD and consequently the licence are not precise enough. Following the completion of the AAD, the DAFM attached additional conditions to the licence (H-R). Conditions (L-R) have been specifically included in relation to the protection of adjoining downstream aquatic based species and habitats. The FAC are satisfied that in all cases the conditions are clearly set out in the licence and the reasoning explained for each additional condition attached for the purpose of compliance with the licence. The FAC are also satisfied the DAFM, as part of the in-combination report, consulted all relevant agency websites and outlined their findings in the report which was taken into consideration as part of the licencing process.

The FAC considered the appellant's contention that the opinion of the general public was not sought under Article 6(3) of the Habitats Directive. The FAC concluded that there is no convincing reason for public consultation at this stage in this case.

The FAC considered the appellant's contention that the Harvest Plan submitted by the applicant was not consistent with the requirements of the Interim Requirements for Felling and Reforestation (DAFM, 2019). The FAC concluded that the Harvest Plan is in fact a document outlining general environment and safety rules and that all of the licenced operations on site must comply with the conditions of the felling licence. There is no specific information before the FAC in regard to Annex (IV) species or wild birds which would give rise to the necessity for attaching additional conditions to the licence. The FAC considers that the granting of a felling licence does not exempt the holder from meeting any legal requirements set out in any other statute. In these circumstances, the FAC concludes there is no real related basis on which to affect the decision in respect of the proposal at appeal.


The FAC considered the appellant's contention that there should be a condition attached to the licence requiring the DAFM to inspect plans and works prior to, during and post works to ensure compliance. The compliance and enforcement of the terms of a licence are matters for the DAFM who are given legislative powers to carry out these functions.

The use of Plant Protection Products is covered by way of Statutory Instruments in Ireland and there is no legal requirement to inform the public, groups or bodies of the intention to spray in individual cases. Compliance and enforcement of conditions is a matter for the DAFM at any stage of the development and the FAC considers that the additional conditions requested by the appellant are not required.

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

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