



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

13th May, 2021

Subject: Appeal FAC 366/2019 regarding licence TFL00354919

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 TFL00354919 is for the felling of 1.49 hectares at Aghnamallagh, Co. Monaghan, which was approved by the Department of Agriculture, Food and the Marine (DAFM) on the 1st November 2019.

The appeal in relation to FAC 366/2019 was considered on the 15th February 2021 by FAC Members: Mr. Myles Mac Donncadha (Deputy Chairperson), Mr Seamus Neely, Mr James Conway and Mr. Derek Daly.

At a meeting of the FAC in relation to this appeal the available documentation was reviewed. It was noted that the only documentation submitted to the FAC that related to screening for appropriate assessment was completed on 19th August 2019. The version of assessment protocol used (dated 26th Nov 2018) does not address in-combination effects and the maximum distance for inclusion of Natura sites is 3 kilometres. The Statement of Facts submitted by DAFM in relation to the appeal refers to the screening having used a 15km radius and in-combination analysis prepared in advance of the licencing decision. Given the absence of this documentation on file with the FAC, DAFM were requested to submit same. Some documentation was subsequently received and circulated to all parties who were invited to make a submission on this documentation and no additional submissions were received by the FAC.

Decision

Having regard to the evidence before it, including the record of the decision by the DAFM, the notice of appeal, submissions received, and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to set aside and remit the decision of the Minister regarding licence TFL00354919.

Licence

The licence pertains to the felling of 1.49 hectares at Aghnamallagh, Co. Monaghan. The site is described as predominantly flat to moderate (<15%). The predominant soil type underlining the project area is predominantly brown earths in nature.

The proposal comprises three plots of land, two on the northern side of the R187 Regional road (plots 2 and 3 comprising 0.25 ha and 0.37ha respectively as shown on the mapping submitted) and the remaining plot (no.1), which is the largest and comprises 0.87 ha in area, is on the southern side of the R187 road. The area is predominantly agricultural and is in a Drumlin landscape. There is a watercourse to the north of the two northern plots. In relation to species mix in plot 1 the trees are 80% Norway spruce and 20% ash and 100% Sitka spruce in the other two plots. The area was planted circa 1990. Replanting as proposed is species mix of 80% Sitka spruce and 20% birch in all three plots.

The application included an application form, maps, and details of species mix in the three plots and proposed replanting.

The application was referred to Monaghan County Council and the response dated the 25th July 2019 indicates a number of observations but raises no objection to the licence.

The DAFM undertook an Appropriate Assessment (AA) pre-screening report (v 26 Nov 18) dated the 19th August 2019 and this is recorded on the file indicating no Natura sites within 3 kilometres and that AA was not required. The Inspectors Certification refers to screening carried out within a 15 kilometre radius and considered two sites; that there was no need to expand this radius in this case and other plans and projects considered are recorded. The European sites considered were Kilroosky Lough Cluster SAC 001786 and Slieve Beagh SPA 004167. Each site is considered in turn with its qualifying interests and conservation objectives and reasons are provided for the screening decisions. Kilroosky Lough Cluster SAC 001786 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 hydrological connection and Slieve Beagh SPA 004167 was screened out due to the position of the project area downstream from the Natura site, and the subsequent lack of any hydrological connection and the unsuitability of the project area for use by any species listed as a qualifying interest of the Natura site.

The licence was issued on the 1st November 2019 with conditions.

Appeal.

There is one appeal against the decision.

The grounds contend that based on the information supplied it is not possible to make a decision which would be in compliance with the Habitats and EIA Directives and that the test for Appropriate Assessment screening it is necessary merely to determine that there may be an effect rather than to state it will not have a significant effect. The grounds also content that if mud was to enter the lakes it

could have an effect on the SPA/SAC and the fact that it is over 15 kilometres has no relevance to the fact that there may be an effect. Reference is made in this regard to the judgement of Kelly v An Bord Pleanála.

In a statement to the FAC, that in regard to the granted licence for the proposed felling under TFL00354919 the DAFM indicated that the decision was issued in accordance with procedures, S.I. 191/2017 and the 2014 Forestry Act and that the Department is satisfied that all criteria as outlined in the standards and procedures that follow in the statement have been adhered to in making a decision on the application. The statement from the Forestry Inspector indicates that the Notice of Appeal Form has been read and considered. The project was subject to Appropriate Assessment Screening for any potential significant effect on a Natura 2000 site and was 'Screened out' (see below for screening report and in combination text). The project area is 8.4km from Slieve Beagh SPA and does not contain suitable foraging area for qualifying interest (Hen Harrier). The project is 12.6km from Kilroosky Lough SAC but is not hydrologically connected, therefore cannot have an effect on any of the qualifying interests (Alkaline fens (Peatland), Hard oligo-mesotrophic waters with benthic vegetation of Chara spp. (Aquatic), Calcareous fens with Cladium mariscus and species of the Caricion davallianae (Peatland), Austropotamogeton pectinatus (Aquatic)) The Statement of Fact (SOF) further asserts that the Appellant is incorrect in their statement and that AA Screening was carried out correctly and found that the project would have no significant impact (either alone or in combination) on any Natura 2000 site.

The SOF further indicates;

"The potential for the proposed project to contribute to an in combination impact on European sites was considered. The online planning systems for Monaghan County Council and An Bord Pleanála were consulted on the 21st October 2019 Non-forestry projects identified in the vicinity of the project, i.e. in the Townland of Aghnamallagh include New dwellings (05506, 061148) New tank and extension to cubicle house (88416) The Monaghan County Development Plan was also reviewed, in particular, objectives therein relating to Natura 2000 sites. The DAFM iFORIS Map Viewer was consulted on 21st October 2019 and other forestry related projects identified in the vicinity of the project include: 1 Afforestation (CN83765). The project is in line with the Forestry Programme 2014- 2020. Individually, this project does not represent a source and no pathway, or if so, no pathway for significant effect on any European site exists. Consequently, there is no potential for this project, to any such effects, when considered in combination with other plans and projects".

In addressing the grounds of appeal, the FAC considered, in the first instance, the contention that the proposed development should have been addressed in the context of the EU EIA Directive (Directive 2011/92/EU as amended by Directive 2014/52/EU). The FAC considered that 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 is 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 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 felling 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 similarly not covered by the Irish regulations (S.I. 191 of 2017). The Forestry Act 2014 defines a forest as land under trees with a minimum area of 0.1 ha and tree crown cover of more than twenty per cent of the total area or the potential to achieve this cover at maturity. The decision under appeal relates to a licence for the felling and replanting of an area of 1.49 hectares.

The FAC does not consider that the proposal comprises deforestation for the purposes of land use change and neither that it falls within the classes included in the Annexes of the EIA Directive or considered for EIA in Irish Regulations. Therefore, the FAC concluded that screening for EIA was not required in this case and that breaches of the EIA Directive had not occurred.

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/projects, having regard to the conservation objectives of that designated site.

In relation to in-combination the SOF indicates that in combination impact on European sites was considered and the date of that study is outlined in the SOF. No In-Combination report, however, was submitted to the FAC. This report was requested and the DAFM in response have indicated that there is no In-Combination on file for this licence.

The FAC consulted publicly available information from the NPWS and the EPA and identified the same two sites as are identified in the AA screening contained within the Inspectors Certification on file. The FAC is satisfied that there was no need to extend the radius in this case. The FAC considered the nature, scale and location of the proposal, the European sites identified and their conservation objectives and the reasons for the screening conclusions reached as provided by the DAFM. The FAC finds that the DAFM considered each site in turn and provided the reasons for screening all the sites out for Appropriate Assessment and concurs with the conclusions reached. Details in relation to other plans and projects examined were not submitted to the FAC. The absence of the associated In-Combination report for review and assessment has made it impossible for the FAC to conclude whether a serious error has taken place or not and, applying a precautionary approach, cannot conclude an error did not take place with respect to DAFM screening for Appropriate Assessment.

Regarding water quality the site is within the river subbasin Conawary (Lower) 010, and that waterbody which has a poor WFD status (2013 – 2018) and in relation to River Waterbodies Risk, the projection is indicated as at risk as documented by the EPA. Agriculture is identified as a pressure on the river waterbody, but forestry is not. Part of this waterbody briefly adjoins the north edge of the two northern most plots on the site. Based on the information available to it and having regard to the scale, nature

and location and the conditions under which operations would be undertaken, the FAC is not satisfied that the proposal poses a significant threat to water quality.

Regarding water quality the site is within the river subbasin Conawary (Lower) 010, and that waterbody which has a poor WFD status (2013 – 2018) and in relation to River Waterbodies Risk, the projection is indicated as at risk as documented by the EPA. There is a watercourse, which is part of the Conawary (Lower)_010, which is located to the north of the two northern most plots on the site, which briefly adjoins them. Agriculture is identified as a pressure on the river waterbody, but forestry is not. Based on the information available to it and having regard to the scale, nature and location and the conditions under which operations would be undertaken, the FAC is not satisfied that the proposal poses a significant threat to water quality.

In considering the appeal, and in the absence of the in-combination report which was stated to have been part of the decision making, the FAC cannot conclude an error did not take place with respect to the screening for Appropriate Assessment. The FAC is thus setting aside and remitting the decision of the Minister regarding licence TFL00354919 in line with Article 14B of the Agricultural Appeals Act 2001, as amended, to undertake a new screening for Appropriate Assessment in line with Article 6(3) of the EU Habitats Directive to include an In-Combination assessment of potential effects arising from the project.

Yours sincerely,

A black rectangular redaction box covering the signature of Derek Daly.

Derek Daly On Behalf of the Forestry Appeals Committee

