



An Coiste um Achomhairc
Foraoiseachta
Forestry Appeals Committee

[Redacted]
[Redacted]
[Redacted]

20th May 2021

Subject: Appeal FAC 169/2019 relating to Licence TFL00309119.

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 (DAFM). 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.

Licence

The licence is for 17.48 Ha of 2nd & 3rd forest thinnings at Monesk, Co. Cavan. The application was submitted to the DAFM on 04/03/2019. On 23/04/2019 ten third-party submissions were received on the licence application. The licence was approved by the DAFM on 14/06/2019 with standard conditions.

There are ten third-party appeals against the decision to grant the licence.

Hearing

An oral hearing of the above appeal of which all parties were notified, was held by the FAC on the 12th of May 2021.

FAC Members: Mr. John Evans (Deputy Chairperson), Mr. Vincent Upton, Mr. Seamus Neely and Mr. Iain Douglas.

Appellants: [Redacted]
[Redacted]
[Redacted]

Applicant: [Redacted]

DAFM Ms. Eilish Kehoe, Mr. Martin Regan.

Secretary to the FAC Ms. Marie Dobbyn.

Decision

Having regard to the evidence before it, in particular the submissions at the oral hearing given by the applicant's representative and the DAFM, the record of the decision by the DAFM, the notice and grounds of appeal, and the considerations set out hereunder, the FAC has decided to set aside and remit the decision of the Minister regarding licence reference TFL00309119 at Monesk, Co. Cavan.

Background

An Inspector's Certification Report indicates that the proposed thinning was the subject of a desk assessment only. An Appropriate Assessment (AA) Screening Form (v. 26Nov18) dated 22/05/2019 describes the soil type underlying the project area as mainly podzols/brown podzolics/brown earths/gleys/highly modified peat & peaty podzols/blanket bog/raised bog in nature. The slope is varied

mainly flat to moderate «15%)/steep (15% to 30%)/very steep (>30%). The project area is crossed by/adjoins an aquatic zone.

The AA Screening Form notes that there is a Natura Site 2000 site, (Boleybrack Mountain SAC [Site Code 002032]) and a proposed Natural heritage Area (Lough MacNea Upper pNHA [Site Code 000986]) within 3Km of the proposed forest thinning. The AA Screening concludes that the project can be screened out and an Appropriate Assessment is not required. The reasons stated are (a) the position of the project area downstream from the Natura site and the subsequent lack of any hydrological pathway and (b) the location of the project area is within a separate water body catchment to that containing the Natura site with no upstream connection and the subsequent lack of any hydrological pathway. The AA Screening Form (26Nov18) did not make provision for an "in combination" assessment of the project with other plans or projects.

Appeal

The third-party appeals against the decision to grant the licence all had the same grounds of appeal, summarised as follows:

- The site is in a highly scenic area within the Geopark (the Marble Arch Caves UNESCO Global Geopark).
- Public roads in the area are unsuited to heavy vehicles used for timber extraction.
- Pollution of watercourses due to soil disturbance and run-off.
- Transmission of bovine TB to livestock from wildlife occupying the forest.
- Impact on quality of life from forestry.

Oral Hearing

At the oral hearing, the DAFM Statement of Fact (SoF) dated 31/07/2019 was taken as read. The SoF confirms the administrative details of licence TFL00309119 as outlined above and states that the DAFM was satisfied that all criteria in its standards and procedures had been adhered to in making the decision on this licence application.

Also taken as read was the SoF by the DAFM Inspectorate. The Inspector confirmed that relevant AA procedure in operation at the time, that of the AA Screening Form (26Nov18), was applied, that the forest thinning was screened out after Standard Operating Procedures were followed and that the AA Screening did not include an In-combination assessment. The SoF contains a response to the third-party submission.

The DAFM confirmed that the forest was planted in the year 2000.

The applicant stated that the company has a protocol with Local Authorities for repair of damage to public roads.

Consideration by the FAC

The FAC consulted with publicly available mapping provided by the Environmental Protection Agency, the OSI, the DAFM, and other on-line services.

The aerial photography shows the forestry, site of the proposed thinning, is bounded by agricultural grassland and some forestry. A stream, Water Framework Directive (WFD) River Waterbody ROO_010 runs along a portion of the western boundary of plot 3.

EPA mapping shows the soil type(s) of the site as brown podzolics/brown earths/gleys and basin peats.

The River Waterbody ROO_010 has been assigned a moderate water quality status in the 2013-2018 assessment period and is at risk due to pressures from domestic wastewater discharge and pasture. While there is a direct hydrological connection between the forestry and ROO_010 DAFM confirmed at the hearing that a buffer strip along the watercourse site is not required as the proposal is for thinning rather than clearfell.

The ROO_010 River Waterbody is part of the Erne and the MacneanLoughsconnector_SC_010 sub-catchment.

The site has three underlying groundwater bodies, Marble Arch IEGBNI_NW_G_036, Ballintempo IEGBNI_NW_G_021 and Glenfarne IE_NW_G_042 all of which have good status and are not identified as being at risk in the WFD 3rd Cycle programme.

The proposed thinning is neither within a Natura 2000 site nor is it required for the management of a Natura 2000 site. The FAC has confirmed that four Natura sites lie within 15km of the site area, Boleybrack Mountain SAC (Site Code 002032), Lough Gill SAC (Site Code 001976), Corratirrim SAC (Site Code 000979), Cuilcagh-Anierin Uplands SAC (Site Code 000584).

The FAC noted that DAFM completed and recorded a screening for AA and determined that the proposal itself and in-combination with other plans and projects would not significantly impact on the Boleybrack Mountain SAC.

In addressing the grounds of appeal, the FAC considered the following matters as raised in the grounds of appeal,

- The site is in a highly scenic area within the Geopark (the Marble Arch Caves UNESCO Global Geopark).
- Public roads in the area are unsuited to heavy vehicles used for timber extraction.
- Pollution of watercourses due to soil disturbance and run-off.
- Transmission of bovine TB to livestock from wildlife occupying the forest.
- Impact on quality of life from forestry.

Scenic Amenity

The FAC notes that the area within which the site is located, the Upland Areas West Cavan, is designated as having High Landscape Value in the Cavan County Development Plan 2014-2020. The FAC also notes that the area within which the site is located is within the Marble Arch Caves UNESCO Global Geopark). The forest to be thinned was planted in the year 2000, the Geopark was designated in 2008. The application is for forest thinning rather than clearfell and therefore the FAC considers as such any impact on the landscape will not be significant.

Public Roads

The FAC notes the assertion from the applicant's representative at the oral hearing that there is a protocol between the applicant and Local Authorities for the repair of any damage to the public road system. Additionally, there are statutory provisions under the Roads Act to ensure roads are maintained in a fit condition.

Pollution of watercourses

The FAC notes that there are no recognised watercourses crossing any of the 6 plots to be thinned and that the river waterbody ROO_010 is on the periphery of the forest. The DAFM confirmed that particular

watercourse and indeed all watercourses are protected by a number of forestry standards and practices with which applicants are required to comply. The FAC is satisfied that adherence to the guidelines and standards specifically conditioned in the licence are adequate to protect the river waterbody from risk of pollution by forest thinning.

Transmission of Bovine TB

The control of bovine TB is under the remit of the Eradication of Animal Disease (ERAD) Division within DAFM.

Impact on quality of life from forestry

The FAC notes that the forestry is more than 20 years in situ, the thinning of these trees and their eventual replacement will not add to the volume of afforestation in the area.

Appropriate Assessment Screening.

The FAC noted that the DAFM undertook a screening of the proposal and recorded that one Natura site is located within 3km of the proposed forest thinning, Boleybrack Mountain SAC (Site Code 002032). The screening indicates that the proposal does not overlap a Freshwater Pearl Mussel Catchment and that there is no possibility of a significant effect by the proposed thinning on the Natura 2000 site either by itself or in-combination with other plans or projects. There is no consideration of other plans and projects recorded on the file and the FAC considers that this constitutes a serious error in the making of the decision.

Conclusion

In considering the appeal the FAC had regard to the record of the decision and the submitted grounds of appeal, in addition to submissions made at the oral hearing. In the above circumstances, the FAC is satisfied that a serious or significant error occurred in the making of the decision to grant the licence. As a result, the FAC concluded that the decision of the DAFM regarding licence TFL00309119 should be set aside and remitted to the Minister to undertake a new Appropriate Assessment screening of the likely significant effects on European sites of the proposed forest thinning itself and in-combination with other plans and projects.

Yours sincerely,

A black rectangular redaction box covering the signature of the official.

Iain Douglas, On Behalf of the Forestry Appeals Committee