



An Coiste um Achomhairc
Foraoiseachta

Forestry Appeals Committee

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May 24th ,2021.

FAC ref: FAC003/2020.

Subject: Appeal in relation to Licence TFL00385119

Dear [REDACTED]

I refer to your appeal to the Forestry Appeals Committee (FAC) against the decision by the Department of Agriculture, Food and Marine (DAFM) in respect of felling licence TFL00385119.

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

Felling Licence TFL00385119 was granted by the Department of Agriculture, Food and the Marine (DAFM) on December 10th,2019.

Hearing

The FAC conducted a hearing of the appeal FAC003/2020 regarding the decision to issue the licence TFL00385119 on March 4th 2021.

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

Secretary to the FAC: Mr Michael Ryan

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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 and all other submissions before deciding to affirm the decision of the Minister to grant licence TFL00385119.

The proposal is for the felling and re planting of 13.60ha at Keelrin, Newtowngore Co Leitrim. The site in three plots, is planted with 100% Sitka Spruce, the proposed re stock is 80% Sitka Spruce, 10% Broad Leaves and 10% open space. The application was submitted to the DAFM on August 2nd 2019 and the proposed dates of felling are, plot one, 2020 and plots two and three, 2023. In line with details as provided by the DAFM, the soil type underlying the project site is predominantly podzols in nature. The slope is flat to moderate <15%. The digitised forest area for thinning and or clear felling within a radius of 5km is 4.89%.

The proposal is within the Erne catchment and the Blackwater (Newtowngore)_Sub-Catchment_20.

The Applicant submitted an application pack which includes Maps and a document titled Harvest Plan.

The DAFM referred the application to the National Parks & Wildlife (NPWS) and Leitrim County Council on August 9th 2019. NPWS replied on August 21st, 2019 stating, the Department has no comments to make on this case. There is no record of any response from Leitrim County Council. There was also a referral to the DAFM Archaeologist who responded stating the proposed site does not contain or is not contiguous to any Recorded Monuments.

The DAFM carried out Appropriate Assessment Screening (AAS) on three Natura 2000 sites within 15km of the project site, the AAS is outlined as part of the Inspector Certification – Felling Report. Two SAC's were screened out, Cuilcagh - Anierin Uplands and Lough Oughter and Associated Loughs for reasons of, the absence of any aquatic zone within or adjoining the project area and the absence of any significant relevant watercourse(s) within or adjoining the project area. Lough Oughter SPA was screened out for reasons of the unsuitability of the project area for use by any species listed as a qualifying interest of the Natura site.

The DAFM consulted the following agency websites as part of the in-combination report, Leitrim County Council listing one renovation and extension. Forestry plans and projects from DAFM's iForis Map Viewer were also consulted listing three Afforestation projects between 2014 and 2018 and two forest road projects dated 2014

The licence issued on December 10th, 2019 and is subject to what are relatively standard conditions (a) to (g) and additional condition (h) requiring adherence to the archaeological conditions in the Archaeologist's report.

There is one appeal against the decision to grant the licence, the grounds contend that the Forest Service in its Screening for AA found that there were Natura sites within the 15km zone of impact. That is a trigger for the requirement for Appropriate Assessment as it may have an effect. Also, the inspector answered 'yes' to the following questions, but the inspector fails to



show any evidence on which this answer is based. Q3. As District Inspector, have you reviewed all referral responses and submissions received in relation to this project and this AA screening process? Q4. Is there sufficient information within the application and available from elsewhere to form a sound judgement as to whether or not the project is likely to have a significant effect on a Natura site?

The appellant contends that in most cases the inspector states that the Natura site(s) is in a different catchment but fails to state which catchment that it is in. In these circumstances the only legal answer is that the application has been screened in for AA. The judgement in Case C-323/17 states; Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that, in order to determine whether it is necessary to carry out, subsequently, an AA of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site. It is the appellant's contention that safeguards published in the Forest Service guidelines, requirements & procedures are in fact measures intended to avoid or reduce the harmful effects of the plan or project on that site.

Any decision must comply with this "Commission notice" which interprets the relevant judgements of the CJEU "Managing Natura 2000 sites the provisions of Article 6 of the 'Habitats' Directive 92/43/EEC"

The Irish Courts have interpreted the requirements for AA Screening in the judgement Kelly - v- An Bord Pleanála & others which states:

26. There is a dispute between the parties as to the precise obligations imposed on the Board in relation to the stage 1 screening by s.1777U but its resolution is not strictly necessary in these proceedings. There is agreement on the nature and purpose of the screening process which is well explained by Advocate General Sharpston in Case C-258/11 Sweetman at paras 47-49:

"47. It follows that the possibility of there being a significant effect on the site will generate the need for an appropriate assessment for the purposes of Article 6(3). The requirement at this stage that the plan or project be likely to have a significant effect is thus a trigger for the obligation to carry out an appropriate assessment. There is no need to establish such an effect; it is, as Ireland observes, merely necessary to determine that there may be such an effect.

In reply to the grounds of appeal the DAFM stated that the relevant AA procedure was applied. All Natura 2000 sites were screened out in conjunction with an in-combination assessment of all forest and non-forest plans/projects in the area. All AA screening information is on file.

The FAC considered 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 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 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). As such, the FAC concluded that there is no breach 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 projects, having regard to the conservation objectives of that designated site. In this case, the DAFM undertook a Stage 1 screening in relation to Natura 2000 sites within 15 km and concluded that the proposed project alone would not be likely to have significant effects on any Natura 2000 site. The FAC considers the 15km radius to have been in order having regard to the size and nature of the proposal, clear-felling of 13.6 ha in two lots over a 3 years period.

The proposal site does not contain any relevant watercourses, the nearest EPA marked watercourses/waterbodies are Garadice Lough to the north (c. 100m) with moderate WFD status per EPA and the Mullaghboy River to the west (c. 260m) with unassigned WFD status per EPA. The application maps and the DAFM certification confirm the proposal does not contain or adjoin any aquatic zones, and there is no direct connection from the proposal to the Mullaghboy River. In addition, the proposal is subject to the Forestry and Water Quality Guidelines and other guidelines as specified at licence condition (a). The FAC is satisfied from the aforementioned that there will be no effect from the proposal on the waterbodies.

The FAC notes the closest point of the Lough Oughter and Associated Loughs SAC to the proposal is c. 9.4 km in direct distance and c. 27.6 km to the nearest waterbody Garadice Lough, with the Lough Oughter Complex SPA at c. 11.1 km direct distance. In addition, the Cuilcagh Anierin Uplands SAC is c. 12.1 km and the Moninea Bog SAC (UK0030212) is c.15km. The proposal is in the Blackwater [Newtowngore]_SC_020 and the Erne catchment and does not share the sub-catchment with any of the Natura 2000 sites. The Northern Ireland site's exclusion from the DAFM screening of European Sites within 15km of the proposal is considered an error. However, in the circumstances of this case the FAC does not consider it to be a significant error having regard to the distances and absence of pathway and the



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subsequent absence of any likelihood of significant effect arising for the SAC from the proposal. The in-combination assessment completed by the DAFM was compiled on 20 November 2019 and included consideration of nearby forestry related projects. The FAC considers the screening conclusion to screen out from stage 2 AA is sound in this instance and that the proposal poses no likelihood of significant effects on its own or in-combination with other plans or projects on any European Site.

The FAC notes the Inspector's responses to questions 3 and 4 in the certification to which the Inspector replied 'yes'. The only referral response is that from the NPWS which was one of no comment. The FAC is also satisfied there was sufficient information on which to undertake the AAS for any likely significant effects in this instance.

Based on the information before it, the FAC concluded that the DAFM did not make a serious or significant error or series of errors in their decision to issue the licence and did so in compliance with fair procedures. In deciding to affirm the decision to grant the licence, the FAC considered that the proposed development would be consistent with Government policy and good forestry practice.

Yours Sincerely

Dan Molloy, on behalf of the FAC

