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27th May 2021

Subject: Appeal FAC 747/2020 relating to Licence TFL 00468320.

Dear [REDACTED]

I refer to the 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.

Licence

The licence is for 6.46 Ha. of forest thinning at Dungar Co. Roscommon. The application was submitted to the Department of Agriculture, Food and the Marine (DAFM) on 11/02/2020. One third party submission was received on the licence application on 04/03/2020. The licence was approved by the DAFM on 02/09/2020 with standard conditions.

There is one appeal 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 6th of May 2021.

FAC Members:	Mr. John Evans (Deputy Chairperson), Mr. Dan Molloy, Mr. Derek Daly and Mr. Iain Douglas.
Appellant:	[REDACTED] (Did not attend).
Applicant:	[REDACTED]
DAFM	Ms. Eilish Kehoe, Mr. Momme Reibisch.
Secretary to the FAC	Mr. Michael Ryan.

Decision

Having regard to the evidence before it, in particular the submissions at the oral hearing given by the appellant, the applicant 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 affirm the decision of the Minister to grant licence Reference TFL 00468320 at Dungar Co. Roscommon.

Background

An Inspector's Certification Report with a last spatial run date of 20/07/2020 indicates that a desk inspection only was carried out on the proposal. The report describes the soil type underlying the project area as predominantly podzols in nature, with a predominantly flat to moderate (<15%) slope and that the site adjoins or contains an aquatic zone(s). The vegetation type(s) within the project area comprise conifer plantation with a small plot of ash also being present.

The report notes that there are nine Natura 2000 sites within 15Km of the proposed forest thinning, 7 SACs and 2 SPAs; Bellanagare Bog SAC 000592, Bellanagare Bog SPA 004105, Callow Bog SAC 000595, Cloonchambers Bog SAC 000600, Cloonshanville Bog SAC 000614, Drumalough Bog SAC 002338, Lough Gara SPA 004048, Mullygollan Turlough SAC 000612, Tullaghanrock Bog SAC 002354. The report records an Appropriate Assessment (AA) screening decision to screen out these sites for a number of reasons including (a) The position of the project area downstream from the Natura site, and the subsequent lack of any hydrological connection, (b) The unsuitability of the project area for use by any species listed as a qualifying interest of the Natura site, (c) Distance of the project from the SAC, (d) Other factors such as the QI species having abandoned the site, (e) distance of the project sites from the from Natura site, (f) 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

The report also contains an in-combination assessment carried out by the DAFM that concludes that the project, when considered in combination with other plans and projects, would not give rise to the possibility of a direct or indirect effect on the integrity of any Natura 2000 site in view of those sites' conservation objectives.

The Inspector's Certification Report also contains an assessment of the environmental factors relating to the proposed afforestation in order to determine whether the proposed afforestation requires an Environmental Impact Assessment Report (EIAR) and concludes that it is not necessary to proceed EIA.

The licence application was referred to the archaeology section of the Forest Service Inspectorate. The archaeology report noted that the recorded monument is more than 80m north-east from the forest boundary. The report had no specific archaeological conditions other than to require compliance with the Interim Standards for Felling and Reforestation.

Appeal

There is one appeal against the decision to grant the licence. The grounds of appeal are summarised as follows:

- That no Environmental Impact Assessment screening has ever been carried out.
- It is necessary to establish if the planting of this forest complied with the law. Therefore no decision to replant can be made without an Environmental Impact Assessment Report screening.
- No AA Screening has been carried out according to the requirements of the EU Directive and Irish implementing law.

Oral Hearing

At the oral hearing, the DAFM read into the record a Statement of Fact (SoF) dated 12/10/2020 confirming the administrative details of the licence TFL 00468320 as outlined above and states that the DAFM is

satisfied that all criteria in its standards and procedures had been adhered to in making the decision on this licence application.

An SoF was also read into the record by the DAFM Inspectorate dated 12/10/2020 stating that; the relevant Appropriate Assessment (AA) procedure dated (05Nov2019) was applied at the time; that the project was screened out after Standard Operating Procedures were followed; that the proposal was screened out using the Habitat Table 18Dec19 and the Bird Foraging table 06Jan20 and that an In combination assessment was carried out.

The DAFM confirmed to the FAC that the dates on the Statement of Fact were when the Inspector's Certification Report and the In-Combination Statement were completed and that the third party submission on the licence application was considered prior to the licence being issued. The DAFM explained that the difference in area to be thinned, (the application states 6.46 Ha., the SoF states 5.97 Ha.) is due to the more accurate measurement by digitisation of the plot to be thinned. When queried the DAFM confirmed that impacts on the WFD River Waterbody Carricknabraher_010 were assessed as part of the EIA Screening and that the proposed temporary bridging points on the drains running through the site and connecting to the Carricknabraher river would not impact on water quality if constructed to the standards specified by the DAFM. The DAFM confirmed that the forest was planted in the year 2000 and was subject to the consent procedures in operation at that time.

The applicant confirmed to the FAC that the licence was for thinning of the existing forest. The applicant explained that the "water related hot spot" shown on the Harvest Map is an area of standing water with no inflow or outflow and that aquatic buffer zones applied only to drains and watercourses.

The DAFM confirmed that the "water related hot spot" was not a turlough as evidenced by the fact that the water level is static and soils are not karstic and that the nearest turlough was in a separate water catchment.

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 site of the proposed thinning bounded by agricultural grassland on the north and east and by forest to the south and west. A drain runs through the site from northwest to southeast connecting to the Carricknabraher river some 780m to the south of the site.

Soil type is identified as Gley on the GSI mapping, which is generally a wet mineral and organic soil.

The river south of the site is identified as River Waterbody Carricknabraher_010 in the WFD River Waterbody Status report 2013-2018 and has good water quality status. The WFD 3rd Cycle categorises the river waterbody as not at risk. There is a direct hydrological connection between the site and this river waterbody by way of the drain running northwest to southeast through the site.

The Carricknabraher_010 River Waterbody is part of the Upper Shannon Catchment 26B and the Breedoge_SC_010 sub-catchment.

The underlying groundwater body is the Carrick on Shannon IE_SH_G_048 which has an Overall Groundwater Status of Good and is identified as being at risk in the WFD 3rd Cycle programme. EPA mapping indicates agriculture to be the main source pressure on the groundwater body.

The proposed thinning is not within a Natura 2000 site nor is it required for the management of a Natura 2000 site. The FAC has confirmed that the only Natura sites identified as being within 15km of the site are those examined in the AA Screening. The location of the project area is upstream of the nearest Natura 2000 site, the Cloonshanville Bog SAC 000614 (circa 2km from the site). This site was screened out in the AA Screening report due to other factors and the distance from the SAC. The FAC notes that the proposed thinning would not affect the Qualifying Interests of this SAC which are all related to the bog habitats.

The FAC noted that DAFM completed and recorded a screening for Appropriate Assessment (AA) that determined that the proposal itself and in-combination with other plans and projects would not impact on a Natura site. The FAC concurs with this conclusion.

The FAC notes that the site is in an area of moderate landscape value in the Roscommon County Development Plan 2014-2020. Forestry in this area is not identified as a force of change in the development plan in this area.

In addressing the grounds of appeal, the FAC considered the following matters,

EIA Directive.

With regard to the appellant's view that (a) no Environmental Impact Assessment screening has ever been carried out and (b) that it is necessary to establish if the planting of this forest complied with the law, therefore no decision to replant can be made without an Environmental Impact Assessment Report screening. The FAC in considering these two grounds have had regard to the fact 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 decision under appeal relates to a licence for the felling of trees as part of a thinning operation on an area of 5.97Ha, and so is sub-threshold for mandatory EIA as set out in the Irish Regulations.

The DAFM recorded a consideration of the application across a range of criteria, including water, soil, terrain, slope, designated areas, archaeology, landscape and cumulative effects, and determined that the project was not required to undergo the EIA process. The DAFM in their considerations on this, in the section focusing on the cumulative effect, recorded answers to questions on the area when the proposed operations are considered in combination with other recent, ongoing or planned work, and the responses indicated an area of 28.85Ha, and determined that the cumulative effect of the application would not have a significant impact.

The FAC noted that the DAFM recorded a consideration of the application across a range of criteria relevant to the development proposed, including water, soil, terrain, slope, designated areas, landscape and cumulative effects, and determined that the project was not required to undergo the EIA process. The FAC is satisfied that the range and type of criteria considered is appropriate for DAFM to determine whether an EIAR was required having regard to the nature, scale and location of the proposal.

Appropriate Assessment Screening.

With regard to the appellant's view that no Appropriate Assessment screening has been carried out according to the requirements of the EU Directive and Irish implementing law. The FAC noted that the DAFM had carried out a Stage 1 screening assessment for Appropriate Assessment, including an in-combination assessment, in advance of making the decision to grant the licence. This identified 7 SACs and 2 SPAs within a 15km radius of the development. Having regard to the nature and scale of the proposed development and the characteristics of the surrounding environment, the FAC concluded that this approach was correct and that there was no possibility of the proposed development giving rise to the likelihood of significant effects on any Natura 2000 site outside this distance. The FAC noted the procedures adopted by the DAFM in its screening, listing the qualifying interests and conservation interests for each site within the 15km radius of the development and assessment of the project design, location of the project and possible pathways to the listed designated sites. The FAC further noted that, in the case of all of the Natura 2000 sites listed the DAFM discounted the possibility of significant effects arising for the reasons stated above. The FAC concluded that the procedures adopted by the DAFM in carrying out screening for appropriate assessment and the conclusions reached were correct, and that the proposed development alone, or in-combination with other plans or projects, would not be likely to have significant effects on any Natura 2000 site.

In considering the appeal, the FAC had regard to the record of the decision, the submitted grounds of appeal and submissions received at the oral hearing. The FAC is satisfied that no serious or significant error or series of errors was made in making the decision or that the decision was made without complying with fair procedure. The FAC is thus affirming the decision of the Minister regarding licence TFL 00468320 in accordance with Article 14B of the Agricultural Appeals Act 2001, as amended. 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,

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

Iain Douglas, On Behalf of the Forestry Appeals Committee

