



An Coiste um
Achomhairc
Foraoiseachta
Forestry
Appeals
Committee

[REDACTED]
October 5th, 2021.

FAC Ref: FAC 704/2020.

Subject: appeal in relation to Licence TFL00475220.

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.

Background

Felling Licence TFL00475220 was granted by the Department of Agriculture, Food and the Marine (DAFM) on August 24th, 2020.

Hearing

An oral hearing of appeal: FAC 704/2020 regarding the decision to issue the licence TFL00475220 was conducted by FAC on June 22nd, 2021.

Attendees:

FAC: Mr Des Johnson (Chairperson) Mr Donal Maguire,
Mr Luke Sweetman, Mr Dan Molloy.

Administrative Secretary: Mr Michael Ryan.

Applicant representatives: [REDACTED]

DAFM Representatives: Ms Eilish Kehoe, Mr Donal J Keegan.

Appellant: [REDACTED]

An Coiste um Achomhairc
Foraoiseachta
Forestry Appeals Committee

Kilminchy Court,
Portlaoise,
Co Laois
R32 DWT5

Eon/Telephone 076 106 4418
057 863 1900

Decision.

The FAC considered all the documentation on the file, including application details, processing of the application by the DAFM, the grounds of appeal and all other submissions, including submissions made at the Oral Hearing before deciding to set aside and remit the decision of the Minister to grant licence TFL00475220.

The proposed application is for the first thinning of 13.37ha in the townlands of Ballydonnellan and Carrowreagh, Killoran Co Galway and Lissalumma and Ballyhogan, Killreake, Co Galway. The site is subdivided into seven plots, plot 1 Japanese Larch and Sitka Spruce, (4.22ha), plot 2 Ash (.30ha), plot 3 Sitka Spruce and Japanese Larch, (4.75ha), plot 4 Sitka Spruce and Japanese Larch (.72ha) plot 5 Sitka Spruce and Japanese Larch (1.24ha) plot 6 Ash (.53ha) and plot 7, Ash (1.61ha). The trees in plots 1-3 were planted in 2005, the trees in plots 4-6 were planted in 2006 and plot 7 was planted in 2012. The first application received by the DAFM from the applicant dated March 5th 2020 related to a total area of 11.76 ha in six plots. The applicant submitted a revised Harvest Plan and Harvest Plan Map on April 24th ,2020 outlining the addition of plot (7) with an area of 1.61ha planted with ash. The total area of all seven plots within the revised application amounted to 13.37ha.

In line with details as provided by the DAFM, the predominant soil type underlying the project area is highly modified peat & peaty podzols in nature. The slope is predominantly flat to moderate (<15%). The project area is crossed by / adjoins an aquatic zone(s). The vegetation type(s) within the project area comprise conifer and broadleaf forest. The approximate digitised forest area licenced for thinning and or clear-felling operations within 5km of the project site is .54%. The site is not within an area designated as sensitive to fisheries, the site does not contain an archaeological monument and is not contiguous to any recorded monuments or feature. The site is not within a prime scenic area in the County Development plan and is not within a designated SAC, SPA, NHA or pNHA.

There were no referrals of the application to outside bodies.

As part of the Inspector Certification report, the DAFM carried out Appropriate Assessment Screening (AAS) on five Natura 2000 sites within a radius of 15km of the project site, all sites were screened out. The following sites: Ardgraique Bog SAC and Lough Rea SAC were screened out for reasons of the absence within and adjacent to the project area of any habitat(s) listed as a qualifying interest of the Natura site, the unsuitability of the project area for use by any species listed as a qualifying interest of the Natura site and distance. Glenloughaun Esker SAC was screened out for reasons of 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 absence within and adjacent to the project

area of any habitat(s) listed as a qualifying interest of the Natura site, the unsuitability of the project area for use by any species listed as a qualifying interest of the Natura site and distance. Lough Rea SPA was screened out for reasons of distance. Slieve Aughty Mountains 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 carried out an in-combination report in the general vicinity of the project area in the River Sub Basin Lecarrow Stream_010 and Kilcrow_010. The following online planning agency websites were consulted, Galway County Council: Forty domestic planning applications, minor school extension, five agricultural related applications including four bovine housing accommodation facilities, construction of community sports building and school playing pitch. An Bord Pleanála: No data found. EPA: No data found. DAFM internal records: Planting completed on sixteen sites between the years 2015 – 2016, ten applications progressing at various stages between the years 2017 – 2020.

The DAFM concluded, *individually the project does not represent a source, or if so, has no pathway for an effect on any of the Natura sites listed in AAS conclusions for individual Natura sites table. Consequently, the DAFM deems that there is no potential for the project to contribute to any effects, when considered in-combination with other plans and projects.*

The felling licence (TFL00475220) was issued on August 24th 2020 and is subject to relatively standard conditions (a) – (g) and additional condition (h) requiring that the applicant strictly adhere to the Standards for felling and Reforestation (October 2019). These standards replace the existing Forest Harvesting & the Environmental guidelines 2000.

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

- This application is for felling and reforestation, the cumulative area of forest in this area exceeds 50ha.
- No Environmental Impact Assessment has ever been carried out, therefore the replanting is on the extension of an unauthorised development.
- No Appropriate Assessment Screening has been carried out according to the EU Directive and Irish law.
- No Environmental Impact Assessment screening has taken place on this application.

The DAFM has provided a written statement in response to the grounds of appeal as set out by the Appellant which states the following: The application is for three thinning operations, in 2020, 2024 and 2028, on 13.4ha of young plantation, SS and JL, including an area of 0.3ha pure Ash. The application was reviewed by me and a Further Information request was issued to the applicant on 15/04/2020, to provide a Harvest Plan and relevant maps. These were subsequently received, and the plantation was field inspected on 16/06/2020. The plantation is

on a mix of mineral soil and shallow drained amorphous peat derived soil. The application was then screened for AA by myself on 17/06/2020 and 5 Natura sites within 15km were screened out, 4 based on distance and the Slieve Aughty SPA (04168) on basis of "unsuitability of the project area for use by any of the species listed as a Qualifying Interest of the Natura site", as per Birds and Habitats Tables supplied by DAFM. (Please note that as the template Screening wording was subsequently changed on IFORIS in July 2020, the screening wording visible on IFORIS currently is not the wording that was in place on 17/06/2020 when AA Screening was expedited.) As per AAP5NOV19, I then requested an In-combination report from DAFM Wexford on 17/06/2020 and this was supplied later that day by email, concluding that the project will not give rise to the possibility of an effect on any of the Natura sites mentioned in combination with other plans or projects. I then certified the Licence, recommending Approval, on my worklist, with no additional conditions, with an eight-year duration. Please note that some individual questions in the section "Assessment to determine EIA requirement" on the IFORIS certification screen were not updated at that stage and should have been but the conclusion of that process is correctly reflected in the final answer-"On the basis of this examination the project be subject to the EIA process" -NO.

Oral Hearing.

The FAC held an oral hearing on June 22nd, 2021. All parties were invited to attend and participate. The FAC sat remotely and the DAFM participated remotely, neither the applicant nor the appellant attended.

At the hearing the DAFM set out processing procedures undergone in issuing the licence, that there were no referrals and that the application was desk and field assessed. The DAFM clarified that an in-combination report was carried out on June 17th, 2020 and that the report was taken into consideration in reaching a decision. The Forestry Inspector stated, that in addition to visiting the site as part of the licencing application for thinning, he also inspected the site prior to planting. The FAC were also advised by the DAFM that a revised Harvest Plan and map was requested from the applicant on April 23rd, 2020, this was forwarded by the applicant's representative on April 24th, 2020. The DAFM also stated that the licence was issued for a duration of eight years and that there are no specific conditions attached to the licence. The DAFM were asked to clarify the variance in relation to the area applied for on March 5th, 2020 and the area stated on the licence as issued on August 24th, 2020. The application of March 5th 2020 refers to six plots totalling 11.76ha and the licence refers to seven plots with a cumulative area of 13.37ha. The DAFM stated that an additional plot was added to the application on April 24th, 2020 increasing the application to 13.37ha and that this was allowable. The FAC sought clarification from the DAFM in relation to species development on the western side of plot one, the Forestry Inspector stated, the image referred to relates to Bing images from 2012 and that the young trees at that time were at an early stage of development, however all species on plot (1) are now performing satisfactorily. The DAFM was asked by the FAC if the revised area applied for, 13.37ha was declared for public notice/advertised. The DAFM stated the revised area of 13.37ha was advertised for public notice on June 26th, 2020. The FAC also asked the DAFM if 3rd parties were aware when making their submission that the area applied for was 13.37ha. The DAFM stated, 3rd parties

were aware when making their submissions that the area applied for was 13.37ha and that both appellants had been informed on August 24th, 2020. The DAFM informed the FAC that the decision to grant the licence was not publicly advertised and that this was an error.

The FAC asked the DAFM if there are drains running through the site and what precautions are in place to protect Carra stream flowing on the north western edge of plot (1). The DAFM stated that there is a significant setback of 10m from the water course (Cara river), that trees removed from plot (1) will be extracted eastwards to avoid disturbance and sediment entering the stream, that the application relates to thinning only and as a result there will not be significant disturbance of the site. The DAFM also stated that there is a drain running through Plot (1) entering Carra stream, that there are also other drains within the site and these drains are well vegetated, that the site is largely a flat site and that forestry operational guidelines will protect Cara river and the main drain going through plot (1).

In considering the grounds of appeal, the FAC considered the appellants contention that the application is for felling and reforestation, the cumulative area of forest in this area exceeds 50ha. The FAC notes that the appellant has not clarified the area referred to in the grounds of appeal. As part of the 'Inspector Certification Felling Report' the DAFM considered the % digitised forest area licenced for thinning and or clear-felling operations within 5km of the site. The current area approved for thinning and or clear-felling within 5km of the project site amounts to .54% of the total area. The FAC also notes that as part of the in-combination report, the DAFM outlined the approximate forest area in the River Sub Basin's Lecarrow stream _010 and Kilcrow _010 to be approximately 9% and 6% forest cover (respectively) which are lower than the national average of 11%. In addition to the above, the FAC also notes thinning is not a class of development covered by the EIA Directive and considers the conclusion reached by the DAFM in their assessment to determine the requirement for EIA to be sound. The FAC considered the appellant's contention that 'no Environmental Impact Assessment has ever been carried out, therefore the replanting is on the extension of an unauthorised development'. The appellant has not submitted any specific information that the existing development is in any way unauthorised or whether it was initial afforestation for the purpose of conversion to another type of land use, or to conclude that there was any significant or serious error made in granting the licence under appeal in this regard. The FAC also notes that the licence application in this case does not refer to replanting as part of the application. The FAC considered the appellant's contention that 'no Appropriate Assessment Screening has been carried out according to the EU Directive and Irish law. The FAC considered that 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 and projects having regard to the conservation objectives of that designated site. The DAFM undertook stage 1 screening on five Natura 2000 sites within a radius of 15km of the proposed site. Screening was carried out in accordance with S.I.477 of 2011 (as amended) and S.I.191 of 2017 (as amended) and it was determined to screen out all sites, concluding no likelihood of a significant effect on any European site and Appropriate Assessment was not required. The FAC also notes that as part of the in-combination report, the DAFM state that individually the

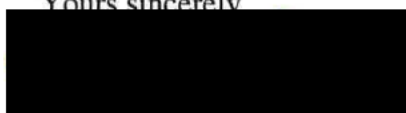
project does not represent a source, or if so, has no pathway for an effect on any of the Natura sites listed in AA screening conclusions for the individual Natura sites table. The FAC are satisfied that no serious or significant error was made in this regard.

The FAC considered the appellants contention that 'no Environmental Impact Assessment screening has taken place on this application', the FAC noted, thinning, as part of a forest management programme, is not a class of development covered by the EIA Directive. The FAC also notes, there is no specific information submitted by the appellant to indicate that the existing development is in any way unauthorised or whether it was initial afforestation for the purpose of conversion to another type of land use, or to conclude that there was any significant or serious error made in granting the licence under appeal in this regard.

Based on the information before it, the FAC notes that the DAFM made a serious error by not advertising their decision to grant the licence by public notice on August 24th 2020 as the public were not made aware of the decision.

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 was a serious error by the DAFM in the making of their decision to grant the licence. The FAC have decided that the decision regarding the licence TFL00475220 should be set aside and remitted to the Minister back to the advertisement stage

Yours sincerely



Dan Molloy, on behalf of FAC.