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2nd December 2020

Subject: Appeal FAC 181/2020 regarding licence CE07-FL0203

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. The FAC notes your reply to its letter of 12th May 2020.

Background

The licence CE07-FL0203 relates to the felling and replanting of forest on 16.6 ha at Furroor (ED Furroor) & Slaghbooly, Co Clare and was approved by the DAFM on 25th March 2020. The applicant in this case is Coillte and the forest, the subject of the application, is currently composed of 96% Sitka Spruce and 4% LPS and replanting would be of Sitka spruce. The Underling soil type is comprises approximately 96% Blanket Peats and 4% Peaty Gleys and the slope is predominantly moderate (0-15%).

Hearing

An oral hearing of appeal FAC 181/2020 was held by the FAC on 18th November 2020 at the Killeshin Hotel, Dublin Rd, Portlaoise, Co. Laois.

In Attendance at Oral Hearing:

Department Representative(s):	Mr. Luke Middleton, Mr. Joe O' Donnell,
Appellant:	[REDACTED]
Applicant / Representative(s):	[REDACTED]
FAC Members:	Mr. John Evans (Deputy Chairperson), Mr. Vincent Upton, and Mr Seamus Neely.
Secretary to the FAC:	Ms. Marie Dobbyn.

Decision

Having regard to the evidence before it, including the record of the decision by the DAFM, the notice of appeal, submissions at the oral hearing, and clarifications obtained, the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister regarding licence CE07-FL0203.

The licence pertains to the felling and replanting of forest on 16.6 ha at Furroor (ED Furroor) & Slaghbooly, Co Clare. The forest is currently composed of 96% Sitka Spruce and 4% LPS and replanting would be of Sitka spruce. The site is described as being on a predominantly moderate slope. The proposal was referred to Clare County Council on the 18th December 2019 and there is no response to the referral on file. The application included a harvest plan, including maps, and general environmental and site safety rules related to the operations. A screening for appropriate assessment was undertaken by DAFM dated 24th March 2020 that identified seven European sites within 15km of the project, all of which were screened out. These are as follows, 2165 Lower River Shannon SAC, 2318 Knockanira House SAC, 37 Pouladatig Cave SAC, 4077 River Shannon and River Fergus Estuaries SPA, 2091 Newhall and Edenvale Complex SAC, 1021 Carrowmore Point To Spanish Point And Islands SAC, and 4182 Mid-Clare Coast SPA. DAFM did not find that there was reason to extend the likely zone of impact to include other European Sites in this case. The licence was approved subject to 8 conditions which included those relating to environmental protection, sustainable forest management, and the public road.

The decision to grant the Licence is subject to one appeal. The grounds of appeal include; Breach of Article 4 (3) of the EIA Directive 2014/52/EU through failure to carry out screening for EIA, Breach of Article 4 (4) of the EIA Directive 2014/52/EU submitting that the licence application does not represent the whole project and that the application does not describe any aspects of the environment which are likely to be significantly affected, Breach of Article 4 (5) of the EIA Directive 2014/52/EU submitting that as the application does not represent the whole project therefore any determination reached in terms of EIA screening is invalid, that there has been inadequate consultation with prescribed bodies citing the current status of the water body, that the Licence conditions do not provide a system of protection for wild birds during the period of breeding and rearing consistent with the requirements of Article 5 of the Birds Directive, that the Minister has failed to comply with the Regulation 21(1) of the Forestry regulations, and that there has been a Breach of Article 10(3) of Forestry Regulations through failure to make available a copy of the application in response to public consultation.

In a statement to the FAC, the DAFM submitted that the standard operational activities of clear-felling and replanting already established forests areas are not included under the specified categories of forestry activities or projects for which screening for EIA is required as set out in Schedule 5 Part 2 of the Planning and Development Regulations 2001, as amended, and in Regulation 13(2) of the Forestry Regulations 2017. The DAFM contended that screening for EIA was not required in this case and that breaches of Article 4(3), 4(4) and 4(5) had not occurred. This view was reiterated by DAFM representatives during the oral hearing in this case. The DAFM in its statement to the FAC confirmed that an AA Screening report was completed by the Inspector and contains recommendations regarding screened European Sites. It further states that a number of the Special Conservation / Qualifying Interests were truncated on the AA Screening form for project CE07-FL0203 when outputting the form related to the screening exercise. It further confirms that all Special Conservation /Qualifying Interests were considered during the screening exercise itself and that the screening determination is considered sound. A revised AA screening form is included on file which includes all Special Conservation /Qualifying Interests of the screened European Sites.

In relation to the contention in the appeal that there had been inadequate consultation with prescribed bodies (with specific reference to the status of the water body), the DAFM advised that it applies a wide

range of checks and balances during its evaluation of felling licence applications in relation to the protection of water, as set out in the DAFM document *Forests & Water: Achieving Objectives under Ireland's River Basin Management Plan 2018-2021* (2018). It also states that any felling licence issued is conditional on adherence to the *Interim Standards for Felling and Reforestation* (DAFM, 2019), which set out a wide range of operational measures to prevent direct and indirect impact on water quality arising from the operation. These measures, it states, include pre-commencement awareness, contingency plan, exclusion zones, silt and sediment control, temporary water crossings, managing extraction, timing operations, monitoring, the preparation, storage and use of potentially hazardous material, and post-operation works. It also referenced those measures applicable to reforestation, including stipulation of water setbacks adjoining aquatic zones indicating that these, together with the silt trapping and slow-water damming of forest drains required during felling, introduce a permanent undisturbed semi-natural buffer along the watercourse, developed primarily to protect water. Regarding consultations, referrals to statutory consultees, including Inland Fisheries Ireland, National Parks & Wildlife Service and local authorities, the DAFM stated that these are automatically triggered according to interactions with certain spatial rules and that discretionary referrals outside of these rules can also be triggered in individual cases, if deemed necessary. It states that DAFM has developed considerable experience in relation to the protection of water during the forestry licensing process, and is actively engaged in the WFD process, contributing proactively to both the 2nd cycle and the 3rd cycle. It further states that while referrals are an important part of the evaluation process, the DAFM is fully informed of its responsibilities regarding the achievement of objectives under the WFD. The DAFM statement also provided responses to the appeal as set out in grounds numbered 5 to 7.

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 EIA Directive. 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 and replanting of an area of 16.6 ha. 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 and therefore considered that breaches of Article 4(3), 4(4) and 4(5) had not occurred.

In relation to the contention in the appeal that there had been inadequate consultation with prescribed bodies (with specific reference to the status of the water body) the FAC notes the submission made by the DAFM in its statement to the committee which outlines the checks and balances applied during the evaluation of felling licence applications, in relation to the protection of water, as set out in the DAFM document *Forests & Water: Achieving Objectives under Ireland's River Basin Management Plan 2018-2021* (2018). The FAC also noted that the project had been referred to Clare Co Council. The FAC noted the submission made by the applicant at the oral hearing when queried as to the process it follows to ensure that the conditions attached to the licence, and in this case particularly relating to Water Quality, are complied with. While the appellant stated in the appeal that the project is within a Water Framework Directive 'Area for Action' no specific information regarding effects on water quality or pathways related to the proposal were submitted. Based on the information available to it, and the information publicly available from the NPWS and EPA, the FAC is satisfied that the proposal does not pose a significant threat to water quality.

In relation to ground no 5 of the appeal regarding any requirement for the curtailment of felling activities during the bird breeding and rearing season, the granting of the felling licence does not exempt the holder from meeting any legal requirements set out in any other statute. Based on the evidence before it the FAC concluded that a condition of the nature detailed by the appellant was not required to be attached to the license in this case.

In relation to the contention in the appeal that the Minister has failed to comply with Regulation 21 (1) of the Forestry Regulations in this case, wherein it was submitted that the appellant made a submission on the application but was not notified of the decision as required under Regulation 21(1), the FAC sought confirmation from the DAFM to ascertain whether persons who made submissions on the application were in fact notified of the decision. The DAFM has confirmed that those who made submissions on the application (including the appellant) were notified of the decision. The FAC further notes that while the notification in compliance with regulation 21(1) (of the Forestry Regulations 2017) in this case, occurred somewhat later than is normal in such circumstances, it occurred in time to enable the appellant lodge an appeal and that the said appeal was subject to an oral hearing on the 18th November 2020.

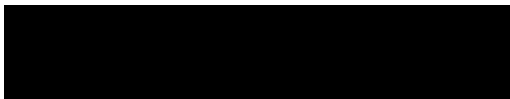
In relation to the contention in the appeal grounds that there has been a breach of Article 10 (3) of Forestry Regulations through a failure to make available for inspection a copy of the application, the FAC considered the provisions in the regulations wherein at Regulation 10(3) of the Forestry Regulations 2017 (SI 191 of 2017) it states that,

(3) The Minister may make available for inspection to the public free of charge, or for purchase at a fee not exceeding the reasonable cost of doing so, the application, a map of the proposed development and any other information or documentation relevant to the application that the Minister has in his or her possession other than personal data within the meaning of the Data Protection Acts 1988 and 2003 where the data subject does not consent to the release of his or her personal data.

The FAC considers that this provision does not provide a right to the Appellant to receive information, but instead provides powers to the Minister to make such information available. The DAFM set out that the Appellant had requested files for 451 licence applications and that this information was provided to them, although a number of months after the request. Having considered the information available to it, the FAC is satisfied that the Appellant was provided with an opportunity to appeal the licence and provided with further opportunity to make submissions on the licence decision, including through appeal and at an oral hearing (if taken up) .

Under Article 6(3) of the Habitats Directive, a 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 or projects, having regard to the conservation objectives of that designated site. In this case, the DAFM undertook a Stage 1 screening in relation to seven Natura 2000 sites within 15km of the project and concluded that an appropriate assessment was not required in relation to any of the seven. In relation to CE07-FL0203, the potential for the proposed project to contribute to an in-combination impact on European sites was considered by the DAFM wherein it deems that this project, when considered in combination with other plans and projects, will not give rise to the possibility of an effect on the Natura sites listed in the screening report in this case.

In deciding to affirm the decision to grant the licence, on the balance of evidence, the FAC is satisfied that there was no serious or significant error or series of errors made in making the decision or that the decision was made without complying with fair procedures. The FAC concluded that the proposed development would be consistent with Government policy and Good Forestry Practice.



Seamus Neely On Behalf of the Forestry Appeals Committee