



30 November 2020

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Our ref: 530/2020

Subject: Appeal in relation to felling licence DU02-FL0121

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 licence DU02-FL0121.

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 DU02-FL0121 was granted by the DAFM on 03 July 2020.

Hearing

An oral hearing of appeal 530/2020 was conducted by the FAC on 26 November 2020.

Attendees:

FAC:	Mr Des Johnson (Chairperson), Ms Bernadette Murphy & Mr Pat Coman
Secretary to the FAC:	Ms Ruth Kinehan
Applicant representatives:	[REDACTED]
DAFM representatives:	Mr Luke Middleton & Ms Eilish Kehoe

Decision

The Forestry Appeals Committee (FAC) considered all of the documentation on the file, including application details, processing of the application by DAFM, the grounds of appeal, submissions made at the Oral Hearing and all other submissions, before deciding to affirm the decision to grant this licence (Reference DU02-FL0121).

The proposed development is for clear-fell and restocking on a stated site area of 24.67ha at Shankill, Co. Dublin. The existing forestry has predominantly mixed conifers and some oak, and proposed restocking would be with Oak (7.03ha), Scots Pine (7.03ha), Birch (4.09ha) and Rowan (4.69ha). The

restocked area would be 23.44ha with 1.23ha open space. A 'Harvest Plan' and Appropriate Assessment Pre-screening Report are submitted with the application.

The DAFM referred the application to Dun Laoghaire-Rathdown County Council. In response the County Council stated no objection as the proposal is in line with Dublin Mountain Partnership objectives. The DAFM also stated that the application had been referred to Inland Fisheries Ireland, and that their requirements were inserted into the conditions of the licence.

In processing the application, the DAFM carried out an Appropriate Assessment screening. Sixteen Natura 2000 sites were identified within a 15km radius of the project lands (11 SACs and 5 SPAs). For designated sites beyond this radius the DAFM considered that there was no likelihood of significant effects on any designated site arising from the proposed development individually or in combination with other plans or projects. The qualifying interests and conservation objectives for each site were listed and the potential for likely significant effects assessed. The following sites were screened out for Stage 2 Appropriate Assessment - Ballyman Glen SAC, Knocksink Wood SAC, Wicklow Mountains SAC, Bray Head SAC, Rockabill to Dalkey Island SAC, Dalkey Islands SPA, Glen of the Downs SAC, South Dublin Bay & River Tolka Estuary SPA, South Dublin Bay SAC, Carriggower Bog SAC, Glenasmole Valley SAC, The Murrough Wetlands SAC, North Bull Island SPA, North Dublin Bay SAC and The Murrough SPA. The Wicklow Mountains SPA was screened in for Stage 2 Appropriate Assessment.

The DAFM produced an Appropriate Assessment Report and Appropriate Assessment Determination, both dated 18th June 2020 and both the subject of independent ecological review. The Determination concluded that the proposed development individually or in combination with other plans or projects, would not adversely affect the integrity of any European site, having regard to its conservation objectives, and would not affect the preservation of European sites at favourable conservation status, if carried out in accordance with recommended mitigation conditions. In summary the recommended conditions are as follows:

Merlin – no felling or other forestry operations permitted within the period 1 March to 31 August inclusive within 100m of the forest edge.

Peregrine – retain existing broadleaves to maximise opportunities for prey species and retain 5m setback from retained habitat to maximise opportunities for prey species.

The licence was issued on 3 July 2020 and is exercisable until 31 December 2022. It is subject to standard conditions plus additional conditions regarding protection of archaeological works, protection of the Merlin, maximising prey species, and protection of water quality and the environment.

There is a single appeal against the decision to grant the licence. The written grounds are broad ranging and contend that the granting of the licence is in breach of Articles 4(3) and 4(4) of the Environmental Impact Assessment (EIA) Directive and that project splitting is not permitted. The licence and associated operations threaten the achievement of the objectives of the underlying waterbody as clear felling has the capacity to impact on water quality. The licence appears to permit the felling of lands already felled (1.73ha), bare areas and trees less than 12 years old. DAFM did not seek the opinion of the general public under Article 6(3) of the Habitats Directive. The Harvest Plan is not consistent with the requirements of the Interim Standard for Felling & Reforestation. The licence



conditions lack precision or clarity and do not provide a system of protection for wild birds during the period of breeding and rearing consistent with the requirements of the Birds Directive. Licence conditions do not provide a system of strict protection for Annex IV species. The licence should include a standard condition for the licensee to notify the Minister at both the commencement and conclusion of operations, and should include a condition that plans and works are inspected by Forestry Service prior to, during and post works to ensure compliance. The licence should include enforceable conditions regarding the notification of appropriate bodies, groups and the public concerned in the case of the spraying of chemicals.

In response, the DAFM stated that felling and reforestation are not categories of development covered by the EIA Directive. The licence contains measures aimed at the protection of water quality. The application site was field inspected, and no hydrological connection or other pathways were identified. The DAFM is actively engaged in the Water Framework Directive (WFD) process and is fully informed of its responsibilities regarding the achievement of the WFD objectives. The DAFM identified the possibility of significant effects on screened European sites. An Appropriate Assessment was carried out and a Determination made. Site specific measures prescribed by the DAFM were included in the Determination as mitigation measures. There would be no adverse effect on any European site. Members of the public could make submissions to the DAFM in respect of the likely effect on the environment of the proposed felling activity. The DAFM fully complied with the requirements of Article 6(3) of the Habitats Directive. It is a principle of law that unless the grant of a first statutory licence expressly exempts the holder of any obligation to obtain a second licence required or to adhere to any other restrictions on the timing of activities or similar where such is set out by statute elsewhere, those other obligations and restrictions apply. The Minister may, at any time, attach or vary conditions to any licence. Users of Plant Protection Products must apply the principles of Good Plant Protection Practice. There is no legal requirement to inform forest owners or adjacent landowners of the intention to spray.

The FAC sat in person at an Oral Hearing in Portlaoise on 26 November 2020. The parties were invited to attend in person or by electronic means. The DAFM and applicants participated electronically but the appellant did not participate. At the Oral Hearing, the DAFM confirmed that the Appropriate Assessment Report and Determination had been independently reviewed by an ecologist and fully taken into account in the making of the decision to grant the licence. There is an archaeological monument (fulacht fiadh) on the site and a condition was placed on the licence to protect this. All of the recommendations in the Appropriate Assessment Determination were incorporated into conditions of the licence. The applicants stated that a large area of forestry (about 15ha) in this location had been burnt in 2018 and other areas had been damaged. The area had been prioritised for felling and replanting as a result. There is a network of forestry trails in this area which is close to a sizeable residential area. The site had been field assessed and there is no hydrological connection to any SAC and no change of land use would result. The site forms part of the Dublin Mountains Partnership. Species to be restocked included Oak (30%), Scots Pine (30%), Birch and Rowan. The area to the north west has been licenced for thinning but this did not include restocking. This area would be converted to a broadleaf forest over time.

In addressing the written 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 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). The FAC considers that there is no convincing evidence before it that the purpose of the proposed felling is a change of land use. As such, the FAC concluded that there is no breach of any of the provisions of the EIA Directive.

The Harvest Plan set out in the licence condition is essentially an operator's manual for the carrying out of the development permitted by the licence. The FAC noted that all works included in a Harvest Plan carried out must comply with the terms of the licence. In these circumstances, the FAC considers that the implementation of the Harvest Plan would not create the likelihood of significant effects occurring on any Natura 2000 site or on the environment.

The FAC considered the procedures adopted by the DAFM in respect of Appropriate Assessment screening, the Appropriate Assessment Report and Appropriate Assessment Determination. The FAC considered that the procedures adopted were consistent with the requirements of Article 6(3) of the Habitats Directive and that the conclusions reached were sound. The FAC noted that the recommended conditions, as contained in the Determination, had been incorporated into the licence granted. The FAC concluded that the proposed development, carried out in accordance with the mitigation measures recommended in the Determination and attached to the licence, would not adversely affect the integrity of any Natura 2000 sites, having regard to their conservation objectives and would not affect the preservation of any such site at favourable conservation status.

The FAC considered that no convincing evidence had been provided to indicate that the proposed development would have an adverse impact on the protection of wild birds or of Annex IV species (Habitats Directive) and noted that no specific details had been provided by the appellant to substantiate these grounds of appeal. The FAC noted that the applicants indicated that, as a matter of course, inspections take place before any felling commences to determine any actions needed in respect of the protection of birds nesting and rearing. The FAC noted that Article 6(3) of the Habitats Directive provides for obtaining the opinion of the general public where the consent authority considers it appropriate, and that the DAFM did not consider it appropriate in this case. While considering the views set out in the grounds of appeal, the FAC concluded that no convincing reason had been submitted for public consultation in this case. The FAC further concluded that, subject to adherence to the conditions set out in the licence, the proposed development would not be likely to give rise to significant effects on any designated site or on the environment. Based on the information



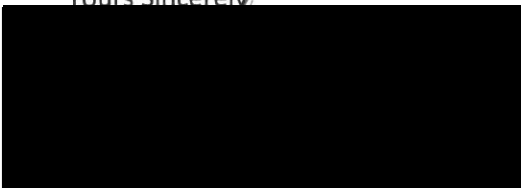
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Forestry Appeals Committee

before it, and having regard to the conditions of the licence, the FAC considered that there is no convincing reason to conclude that the proposed development would threaten the achievement of the objectives of protecting the underlying waterbody. Having regard to the nature and scale of the development, and the characteristics of the surrounding environment, the FAC concluded that the proposed development alone, or cumulatively with other plans and projects, would not be likely to have a significant effect on the environment.

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,



Pat Coman, on behalf of the FAC

