



04 December 2020

Subject: Appeal FAC 235/2020 regarding licence LD02-FL0080

Dear Sir/Madam,

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

Licence LD02-FL0080 for felling and replanting of 6.7 ha at Cooldoney, Co. Longford was approved by the Department of Agriculture, Food and the Marine (DAFM) on 30 April 2020 and is exercisable until 31 December 2022.

Hearing

An oral hearing of appeal FAC 235/2020 was held by the FAC on 06 November 2020.

Attendees;

FAC: Mr. Des Johnson (Chairperson), Mr. Pat Coman, Mr. Vincent Upton and Ms. Bernadette Murphy

Secretary to the FAC: Ms Ruth Kinehan

Appellant: [REDACTED]

Applicant representatives: [REDACTED]

DAFM: Mr. Frank Barrett & Ms. Eilish Kehoe

Decision

Having regard to the evidence before it, including the licence application, processing by the DAFM, the notice of appeal and submissions received, the evidence from the oral hearing and, in particular, the following considerations, the Forestry Appeals Committee (FAC) has decided to affirm the decision of the Minister regarding licence LD02-FL0080.

The licence pertains to the felling and replanting of 6.7 ha at Cooldoney, Co. Longford. The forest is currently comprised of Sitka Spruce along with areas of Lodgepole Pine (c2.5ha), Norway Spruce (c0.7ha) in addition to small areas of Birch and Sally (<c0.02ha). The underlying soil type is described as Basin Peats and Blanket Peats (100%). The slope is given as predominantly moderate (0-15%). The proposal is located in the Upper Shannon Catchment _26F and the Inny (Shannon) Sub-Catchment_20 (26F_7). The forest lies in the Inny River Sub-Basin_060 (15%) and the Rathcronan River Sub-Basin_010 (85%). An unnamed stream adjoins the proposal to the North and flows East to the Rathcronan stream which flows into the Inny River that drains into *Garriskil Bog SAC* and then into *Lough Derravarragh SPA*. The closest hydrological distance from the project area to a European Site is c9.4km (*Garriskil Bog SAC*). The Inny River flows out of *Lough Derravarragh* through the *Garriskil Bog SAC (Eastern part) /SPA/NHA (0679) and Lough Iron SPA/NHA (0687)*.

The proposal was referred to Longford County Council and no response was provided. The application included a Harvest Plan, including maps, and general environmental and site safety rules. In processing the application, DAFM completed a Stage 1 Appropriate Assessment screening with reference to the provisions of Article 6(3) of the Habitats Directive and identified 14 Natura sites (7 SAC & 7 SPA) within 15km and found no reason to extend this radius in this case; 4061 Lough Kinale and Derragh Lough SPA c2.7km, 2201 Derragh Bog SAC c2.8km, 2340 Moneybeg And Clareisland Bogs SAC c5.6km, 2341 Ardagullion Bog SAC c5.6km, 4065 Lough Sheelin SPA c5.9km, 679 Garriskil Bog SAC c6.2km, 4043 Lough Derravaragh SPA c7.6km, 4102 Garriskil Bog SPA c8.5km, 1810 White Lough, Ben Loughs And Lough Doo SAC c12.7km, 4046 Lough Iron SPA c12.8km, 2121 Lough Lene SAC c13km, 4045 Glen Lough SPA c13.5km, 688 Lough Owel SAC c14.5km and 4047 Lough Owel SPA c14.5km. Garriskil Bog SAC was screened out for Appropriate Assessment due to the separation distance and the subsequent lack of a pathway to the Qualifying Interest based on the criteria outlined in the DAFM Habitat Table. The other SAC sites were screened out due the absence of a pathway. The SPA sites were screened out due to separation distance.

The licence was approved with a number of conditions attached which are of a general nature and relate to environmental protection, the maintenance of the forest and good forestry practice. The licence conditions also require, as per Forestry and Water Quality Guidelines, that 20% of the aquatic buffer zone is to be pit planted with broadleaves in an undulating fashion to create a sequence of varying spaces with sharply defined edges to be avoided to create a gradual transition from forest into the riparian zone. Furthermore, no trees are permitted to be closer than 5m to an Aquatic Zone but buffer zone widths may vary depending on soil type, slope and land forms. A minimum initial planting density within the buffer is required by licence.

There is one appeal against the decision. The grounds contend that the decision does not comply with the Habitats Directive or the Environmental Impact Assessment Directive. The Appellant submits that there is no in-combination assessment of the replanting. It is further contended that the area replanted by Coillte exceeds 50ha and therefore requires EIA as no EIA has ever been carried out. The Appellant argues that the inspector has carried out an Appropriate Assessment without the relevant information. It is claimed that the FAC is bound by a judgement which is quoted as follows *"The obligation of a national court to interpret national law as far as possible in accordance with EU law does not require that the parties to the proceedings before it expressly assert that specific interpretation, if those parties allege at least an infringement of the relevant provisions of EU law"*.

In a statement to the FAC, the DAFM described the Appropriate Assessment procedure adopted in processing the licence and submits that the screening relied exclusively on information from the Applicant in relation to considering the potential for in-combination effects with other plans and projects and that a separate in-combination assessment was undertaken subsequently. DAFM confirmed at the Oral Hearing that the latter in-combination was carried out on 28 April 2020 and prior to the licence issuing. The FAC notes that the updated Appropriate Assessment screening form is also dated 28 April 2020.

The FAC sat in person at an Oral Hearing in Portlaoise on 06 November 2020. The parties were invited to attend in person or by electronic means. The DAFM and the Applicants participated electronically but the Appellant did not participate. At the Oral Hearing DAFM submitted that the standard operational activities of clearfelling and replanting already established forests are not included under the specified categories of forestry activities or projects for which screening for EIA is required. DAFM did not accept that the inspector had carried out an Appropriate Assessment without the relevant information. DAFM indicated that a procedure was followed and that this

procedure is documented. DAFM clarified that its subsequent in-combination assessment had been undertaken on 28 April 2020 before the granting of the licence. DAFM confirmed that there was no response from the County Council. DAFM confirmed that the river sub-basin is the area that was used to determine the projects included in the in-combination assessment. The FAC were able to determine at the Oral Hearing the current status of the majority of the forestry projects listed in the in-combination assessment not already marked complete. DAFM stated that the Applicants use all licences issued and so those can be assumed to be complete. Licences have not yet issued for the Applicants 2021 projects. The Applicants concurred with this evidence. DAFM explained that it was unlikely that projects referred to the ecologist have been granted a licence due to backlogs. The Applicant described how the proposal is located on a gentle moderate slope with an easterly aspect and is adjoined to the South and West by an industrial bog and to the North and East by other forestry and agricultural fields. The Applicant explained that there is access to the site via a forest road in the South East and that it is close to the public road. A stream was described as adjoining part of the northern edge of the site that flows eastwards. It was explained that this Rathcronan stream flows for c2.2 km and drains into the Inny River which flows for c8.5km and drains into *Garriskil Bog SAC*, then flows another c2km and ultimately drains into *Lough Derravarragh* which is a SPA. The Applicant gave the closest hydrological distance from the project area to a European Site as 10.7km (*Garriskil Bog SAC*). The Applicant stated that project covers both felling and replanting and was considered with other projects within the sub-basin as part of the screening for Appropriate Assessment consideration conducted by the Forest Service. The Applicant concluded by stating that alone, the project does not represent a source, or if so, no pathway for significant effect on any European site exists and that thus, there is no potential for it to contribute to any such effects when considered in-combination with any other plans/projects.

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 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 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 6.70 ha. The FAC does not consider that the proposal comprises deforestation for the purposes of land use change and neither that it falls within any other classes included in the Annexes I or II of the EIA Directive or considered for EIA in Irish Regulations.

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 or projects, having regard to the conservation objectives of that designated site. In this case, DAFM undertook a Stage 1 screening in relation to 14 Natura 2000 sites and concluded that the proposed project alone or in-combination with other plans and projects, would not be likely to have significant effects on any Natura 2000 site. The Stage 1 screening listed all of the qualifying interests and conservation objectives for each of the listed sites and assessed the likelihood of significant effects arising from the proposed development individually by assessing the project design, location of the project and

possible pathways to the listed designated sites. DAFM also carried out an assessment of the likelihood of significant effects arising from the proposal in-combination with other plans and projects (both forestry and non forestry). The FAC noted that the Inny river flows by the Derra Bog, a sub-site of the Garriskil Bog SAC and part of the Lough Derravaragh NHA, at c. 9.5 km from the proposal and enters Lough Derravaragh. After flowing through *Lough Derravaragh SPA/NHA (0684)* the Inny River also flows through the *Garriskil Bog SAC (Eastern part)/SPA/NHA (0679)* and *Lough Iron SPA/NHA (0687)*. The FAC considered that reference to these hydrological connections were not critical to the overall conclusions reached, having regard to the distance of separation and the assessment reasons for concluding no possibility of significant effects on those designated sites. The FAC has considered the evidence regarding the procedures adopted by the DAFM in reaching the conclusion that the proposed development alone or in-combination with other plans or projects, would not be likely to give rise to significant effects and is satisfied that the procedures and conclusions were correct.

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,



Bernadette Murphy, On Behalf of the Forestry Appeals Committee